373 N.C.—No. 1 Pages 1-66

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ADVANCE SHEETS

OF

CASES

ARGUED AND DETERMINED IN THE

SUPREME COURT

OF

NORTH CAROLINA

JANUARY 27, 2020

MAILING ADDRESS: The Judicial Department
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OF
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SUPREME COURT OF NORTH CAROLINA

CASES REPORTED

FILED 27 SEPTEMBER 2019

ORDERS

PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

HEADNOTE INDEX

JUDGES

Judicial conduct—violations—censure—Where a district court judge, without a contempt hearing, ordered a party into temporary custody and threatened her teenage children in order to achieve compliance with a visitation order, the Supreme Court ordered that the judge be censured for violation of Canons 1, 2A, 3A(3), and 3A(4) of the N.C. Code of Judicial Conduct and for conduct prejudicial to the administration of justice that brought the judicial office into disrepute in violation of N.C.G.S. § 7A-376. **In re Foster, 29.**

SENTENCING

Aggravating factor—taking advantage of position of trust and confidence—insufficient evidence—There was insufficient evidence to support the aggravating factor of taking advantage of a position of trust or confidence when sentencing defendant for engaging in a sex offense with a three-year-old child. Defendant was engaged in a relationship with the victim's mother; there was no relationship between defendant and the victim. Although the State relied on an acting in concert theory based on the victim's relationship of trust or confidence with her mother, the jury was not instructed on the theory. **State v. Helms, 41.**

TERMINATION OF PARENTAL RIGHTS

Best interests of child—evidence weighed—The trial court's decision in a termination of parental rights case was not arbitrary and capricious where it concluded that termination of a father's parental rights was not in the children's best interests. The trial court carefully weighed the evidence and considered the statutory factors set out in N.C.G.S. 7B-1110(a). **In re A.U.D., 3.**

Evidence—guardian ad litem—In a termination of parental rights case, the mere fact that the trial court chose not to follow the recommendation of the children's guardian ad litem did not constitute error. **In re A.U.D., 3.**

Findings—best interests of the child—not written—uncontested issues—In a private termination of parental rights case initiated by an adoption agency, the trial court's failure to make written findings as to certain of N.C.G.S. § 7B-1110(a)'s statutory factors—likelihood of adoption, whether termination of parental rights would aid in the accomplishment of the permanent plan, and the bond between the juveniles and the parent—was not reversible error. These were uncontested factual issues, and remand for written findings would have served only to delay final resolution of the matter. **In re A.U.D., 3.**

TERMINATION OF PARENTAL RIGHTS—Continued

Findings—discrepancy between oral and written findings—An adoption agency appealing a decision by the trial court not to terminate a father's parental rights to his children failed to show existence of error in the mere fact that there were differences between the findings orally rendered at the hearing and those in the written order. A trial court's oral findings are subject to change before the final written order is entered. **In re A.U.D., 3.**

Grounds—neglect and willful abandonment—The trial court properly terminated a father's parental rights on the grounds of willful abandonment where the father made no effort to pursue a relationship with his daughter during the six months preceding the filing of the petition. Although the trial court may consider conduct outside the six-month window in evaluating a parent's credibility and intentions, the determinative period for adjudicating willful abandonment is the six months preceding the petition. **In re C.B.C., 16.**

Orders—signed by judge who did not preside over hearing—nullity—Where the adjudication and disposition orders in a termination of parental rights case were signed by a judge who did not preside over the hearing and the mother subsequently noted appeal from those orders, those orders were a nullity, and the mother's notice of appeal did not divest the district court of the authority to enter further orders in the case. The judge who signed the orders did not err by vacating them, and the trial court that presided over the hearing then had the authority to enter the orders terminating the mother's parental rights. **In re C.M.C., 24.**

SCHEDULE FOR HEARING APPEALS DURING 2019

NORTH CAROLINA SUPREME COURT

Appeals will be called for hearing on the following dates, which are subject to change.

January 8, 9
February 4, 5, 6
March 4, 5, 6
April 8, 9, 10, 11
May 13, 14, 15
August 26, 27, 28, 29
September 30
October 1, 2
November 4, 5, 6, 7, 18, 19
December 9, 10, 11

CASES

ARGUED AND DETERMINED IN THE

SUPREME COURT

OF

NORTH CAROLINA

AT

RALEIGH

EMILY SUSANNA CHÁVEZ

v.

SERENA SEBRING WADLINGTON AND JOSEPH FITZGERALD WADLINGTON

No. 366A18

Filed 27 September 2019

Appeal pursuant to N.C.G.S. § 7A-30(2) from the decision of a divided panel of the Court of Appeals, 821 S.E.2d 289 (N.C. Ct. App. 2018), affirming an order entered on 28 August 2017 by Judge Fred G. Battaglia, Jr., in District Court, Durham County. Heard in the Supreme Court on 28 August 2019.

Collins Family Law Group, by Rebecca K. Watts, for plaintiff-appellant.

Serena Sebring Wadlington and Joseph Fitzgerald Wadlington, pro se, defendant-appellees.

PER CURIAM.

AFFIRMED.

DAVID HAMPTON AND WIFE, MARY D. HAMPTON, PETITIONERS
v.
CUMBERLAND COUNTY, RESPONDENT

No. 60PA18

Filed 27 September 2019

On writ of certiorari pursuant to N.C.G.S. § 7A-32(b) of a divided decision of the Court of Appeals, 808 S.E.2d 763 (2017), vacating an order entered on judicial review of a decision of the Cumberland County Board of Adjustment entered by Judge Robert F. Floyd, Jr. on 13 April 2016 in Superior Court, Cumberland County, and remanding for additional proceedings. Heard in the Supreme Court on 8 April 2019.

Yarborough, Winters & Neville, P.A., by Garris Neil Yarborough, for petitioner-appellants.

Cumberland County Attorney's Office, by Robert A. Hasty, Jr., for respondent-appellee.

PER CURIAM.

CERTIORARI IMPROVIDENTLY ALLOWED.

IN RE A.U.D.

[373 N.C. 3 (2019)]

IN THE MATTER OF A.U.D. AND A.X.D.

No. 133A19

Filed 27 September 2019

1. Termination of Parental Rights—findings—discrepancy between oral and written findings

An adoption agency appealing a decision by the trial court not to terminate a father's parental rights to his children failed to show existence of error in the mere fact that there were differences between the findings orally rendered at the hearing and those in the written order. A trial court's oral findings are subject to change before the final written order is entered.

2. Termination of Parental Rights—findings—best interests of the child—not written—uncontested issues

In a private termination of parental rights case initiated by an adoption agency, the trial court's failure to make written findings as to certain of N.C.G.S. § 7B-1110(a)'s statutory factors—likelihood of adoption, whether termination of parental rights would aid in the accomplishment of the permanent plan, and the bond between the juveniles and the parent—was not reversible error. These were uncontested factual issues, and remand for written findings would have served only to delay final resolution of the matter.

3. Termination of Parental Rights—evidence—guardian ad litem

In a termination of parental rights case, the mere fact that the trial court chose not to follow the recommendation of the children's guardian ad litem did not constitute error.

4. Termination of Parental Rights—best interests of child—evidence weighed

The trial court's decision in a termination of parental rights case was not arbitrary and capricious where it concluded that termination of a father's parental rights was not in the children's best interests. The trial court carefully weighed the evidence and considered the statutory factors set out in N.C.G.S. 7B-1110(a).

Justice NEWBY dissenting.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from an order entered on 20 December 2018 by Judge Donald Cureton Jr. in District Court,

Mecklenburg County. This matter was calendared in the Supreme Court on 11 September 2019 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

Heyward Wall Law, P.A., by Heyward G. Wall, for petitioner-appellant Bethany Christian Services.

Edward Eldred for respondent-appellee father.

DAVIS, Justice.

This case involves a private termination of parental rights proceeding initiated by petitioner Bethany Christian Services (BCS) against respondent-father. In this appeal, we consider whether the trial court erred by declining to terminate respondent's parental rights to his children based on its determination that termination would not be in the best interests of the children. Because we conclude that the trial court's ruling was within its discretion, we affirm.

Factual and Procedural Background

Tanya[1] and respondent began a relationship in 2016, and Tanya became pregnant with twin girls, Amy and Ann (collectively, the children), shortly thereafter. The parties never married, and their relationship ended prior to the children's birth. In September 2016, Tanya falsely informed respondent that she had miscarried and ended contact with him. In January 2017, respondent encountered Tanya at the hospital where she worked and noticed that she appeared to be pregnant. However, respondent did not ask her about the pregnancy.

Respondent pled guilty to being a habitual felon in February 2017 after being convicted of assault with a deadly weapon with the intent to kill or inflict serious injury.[2] While incarcerated, respondent learned that Tanya was, in fact, pregnant and due to deliver in May 2017. In April 2017, respondent wrote to North Carolina Prisoner Legal Services for assistance in establishing paternity. Per its instructions, he attempted to submit a complaint and affidavit of parentage with Mecklenburg County Child Support Enforcement, but the documents were never actually filed with the clerk of court.

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1. Pseudonyms are used throughout this opinion to protect the identities of the juveniles and for ease of reading.

2. Respondent has a projected release date of August 2021.

After the children's birth in May 2017, Tanya initially cared for them. In June 2017, however, she placed them in the care of Sarah, the children's maternal aunt. On 3 August 2017, Tanya relinquished her parental rights to the children to BCS, an adoption agency. Later that month, Tanya visited Sarah's home with two social workers, who proceeded to take custody of the children. Shortly thereafter, Sarah obtained emergency custody of the children in District Court, Mecklenburg County. BCS filed a motion to intervene in the custody action and was awarded custody. BCS subsequently placed the children with a prospective adoptive family, where they have lived through the present date.

On 28 August 2017, BCS filed a petition to terminate respondent's parental rights in District Court, Wake County on the grounds of neglect, failure to legitimate, and dependency. *See* N.C.G.S. § 7B-1111(a)(1), (5), (6) (2017). Respondent then sought an adjudication of paternity and filed an answer to BCS's petition. The results of respondent's DNA test showed a 99.99% probability of paternity as to the children. Respondent also executed an affidavit of parentage. On 18 May 2018, the court entered an order declaring him to be the children's father. In August 2018, the court granted respondent's motion to change venue, and the termination of parental rights matter was moved to Mecklenburg County.

A hearing on the petition to terminate respondent's parental rights was held before the Honorable Donald Cureton Jr. on 7 December 2018 in District Court, Mecklenburg County. At the hearing, the trial court heard testimony from respondent, Tanya, Sarah, the children's guardian *ad litem*, and the prospective adoptive parents.

On 20 December 2018, the trial court entered an order in which it concluded that although a ground existed to terminate respondent's parental rights under N.C.G.S. § 7B-1111(a)(5), termination was not in the best interests of the children. Accordingly, the trial court denied BCS's petition. BCS gave timely notice of appeal to this Court.

Analysis

In this appeal, BCS argues that the trial court failed to make sufficient findings of fact in its 20 December 2018 order and abused its discretion when it determined that termination of respondent's parental rights was not in the best interests of the children. Our Juvenile Code provides for a two-stage process for the termination of parental rights—an adjudicatory stage and a dispositional stage. N.C.G.S. §§ 7B-1109, -1110 (2017). At the adjudicatory stage, the petitioner bears the burden of proving by "clear, cogent, and convincing evidence" the existence of one or more grounds for termination under section 7B-1111(a) of the

General Statutes. N.C.G.S. § 7B-1109(f). We review a trial court's adjudication under N.C.G.S. § 7B-1109 "to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law." *In re Montgomery*, 311 N.C. 101, 111, 316 S.E.2d 246, 253 (1984) (citation omitted).

Here, the trial court determined that there was sufficient evidence presented to terminate respondent's parental rights pursuant to N.C.G.S. § 7B-1111(a)(5). Neither party has challenged this portion of the trial court's ruling, and this issue is therefore not before us.

If a trial court finds one or more grounds to terminate parental rights under N.C.G.S. § 7B-1111(a), it then proceeds to the dispositional stage. N.C.G.S. § 7B-1110(a) states, in pertinent part, as follows:

> After an adjudication that one or more grounds for terminating a parent's rights exist, the court shall determine whether terminating the parent's rights is in the juvenile's best interest . . . In each case, the court shall consider the following criteria and make written findings regarding the following that are relevant:
>
> (1) The age of the juvenile.
>
> (2) The likelihood of adoption of the juvenile.
>
> (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
>
> (4) The bond between the juvenile and the parent.
>
> (5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
>
> (6) Any relevant consideration.

N.C.G.S. § 7B-1110(a).

The trial court's assessment of a juvenile's best interests at the dispositional stage is reviewed solely for abuse of discretion. *In re D.L.W.*, 368 N.C. 835, 842, 788 S.E.2d 162, 167 (2016) (citing *In re L.M.T.*, 367 N.C. 165, 171, 752 S.E.2d 453, 457 (2013); *In re Montgomery*, 311 N.C. at 110, 316 S.E.2d at 252). "[A]buse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *In re T.L.H.*, 368 N.C.

101, 107, 772 S.E.2d 451, 455 (2015) (citing *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988)).

Here, the trial court made the following findings of fact regarding the statutory criteria set forth in N.C.G.S. § 7B-1110(a):

> 14. The twin girls were born May 5, 2017.
>
> . . . .
>
> 43. The children were placed with the PAF [prospective adoptive family] in October 2017. The children have lived with this family continuously, without interruption since that time.
>
> 44. The PAF consists of a father, mother, and 2 biological daughters, ages 8 and 5.
>
> . . . .
>
> 46. The PA [prospective adoptive] parents have completed transracial adoption training and have tried to make the home more culturally inclusive. Some examples are they have provided all the children in their home with black dolls and have placed culturally aware artwork in the home. Additionally, the PA mom has worked to educate church members on implicit bias.
>
> 47. The twins have a strong bond with the PAF, including extended family like the grandparents, aunts, uncles, and cousins – all of which live within 60 minutes of the PAF.
>
> 48. The PAF has participated in multiple activities with the twins including dancing with them, taking them "trick-or-treating," and taking them on family trips.
>
> 49. [Respondent] has 3 other children. He received custody of the oldest two kids. The oldest is with the child's mother after she fled the state and took the child with her immediately following [respondent] being awarded emergency custody. The middle child was placed in his custody but [respondent] became incarcerated in prison for about 3 years on another unrelated offense shortly thereafter. [Respondent] has visitation rights to the youngest child.
>
> 50. [Respondent] is incarcerated at a minimum security prison. Since being incarcerated [respondent] has been

engaged in self-improvement training. [Respondent] has successfully completed all the requirements in the cognitive behavioral intervention curriculum called "Thinking for A Change." Also, [respondent] received a passing grade and 4.5 continuing Education Units for "New Beginnings: Employment Skills for Former Offenders."

51. About one month ago, [respondent] began participating in the work release program. [Respondent] has been "infraction free" while in prison thus making him eligible for the program. Before work release [respondent] worked in the kitchen and made about $7 a week.

52. Presently, [respondent] makes $10 an hour. The money he makes goes into a trust account that he only has access to upon his release, or to pay for court ordered child support or to maintain household bills while he is still incarcerated.

53. [Respondent] would like for [Amy and Ann] to be placed with [Sarah]. He does not want his parental rights terminated. He does not have any paternal relatives he could recommend for placement of [the children].

54. [Sarah] is willing and able to provide placement for [Amy and Ann] until [respondent] is released from prison. She and her son reside in a very neat and tidy, two-bedroom apartment, but she plans to move into a three-bedroom apartment if the girls are placed with her. She is employed full-time as a nurse's assistant. . . . She earns about $3361 per month. Currently, she is in a relationship with an individual who was released from prison recently.

55. When [Amy and Ann] were placed with her, [Sarah] did a good job caring for [the children]. There is no evidence that she did not or could not care for them.

. . . .

60. Although [Amy and Ann] were placed with the PAF in October 2017, it was done solely at the behest of the mother who relinquished her [parental] rights and chose the PAF specifically. [BCS] accepted the relinquishment knowing the whereabouts of [respondent] and without

> speaking with him. After speaking with [respondent] they chose not to return [Amy and Ann] to [Sarah] and there is no evidence they even spoke to her or conducted a home study of her home.
>
> 61. It is evident that [BCS] never had an intention of returning the children to [Sarah] or giving [respondent] an opportunity to parent [Amy and Ann] upon his release from prison.
>
> 62. Although it is clear [respondent] created the circumstances that led to his incarceration, it is also clear that [Tanya] and [BCS] created the circumstances that led to the girls living with the PAF for 14 months causing them to bond to the PAF substantially. They now seek to benefit from those same circumstances by arguing that it is in the best interest of [Amy and Ann] to remain with the PAF because of the substantial bond.
>
> 63. There is no doubt the PAF is taking adequate care of [Amy and Ann] but permanently severing the legal relationship between them and [respondent] and their biological relatives may not be in the best interest of [Amy and Ann] without further proof that such a relationship is truly unsafe or that [respondent] has in fact neglected [Amy and Ann]. Not only has [respondent] expressed a desire to parent [Amy and Ann] but he has proactively attempted to exercise that right through his diligent efforts to legally establish paternity and have [Sarah] gain legal custody.
>
> 64. It is not in the children's best interest to terminate the parental rights of [respondent].

[1] BCS makes several arguments concerning the dispositional findings in the trial court's order. We first address BCS's contention that the trial court's written findings did not adhere to the findings orally rendered at the conclusion of the termination hearing. BCS asserts that the trial court made certain oral findings in its favor regarding the statutory factors set forth in N.C.G.S. § 7B-1110(a) but then omitted these findings from its written order.

Pursuant to Rule 58 of the North Carolina Rules of Civil Procedure, "a judgment is entered when it is reduced to writing, signed by the judge, and filed with the clerk of court." N.C.G.S. § 1A-1, Rule 58 (2017). As our Court of Appeals has correctly held, a trial court's oral findings are

subject to change before the final written order is entered.[3] *See Morris v. Se. Orthopedics Sports Med. & Shoulder Ctr., P.A.*, 199 N.C. App. 425, 433, 681 S.E.2d 840, 846 ("The announcement of judgment in open court is the mere rendering of judgment, and is subject to change before entry of judgment." (citation and internal quotation marks omitted)), *disc. rev. denied*, 363 N.C. 745, 688 S.E.2d 456 (2009). Thus, we conclude that BCS has failed to show the existence of error based merely on the fact that there were differences between the findings orally rendered at the hearing and those set forth in the written order.

[2] We next consider BCS's contention that the trial court did not make sufficient findings regarding the factors set forth in N.C.G.S. § 7B-1110(a). Specifically, BCS argues that the trial court improperly failed to make findings of fact concerning the likelihood of adoption; whether termination of respondent's parental rights would aid in the accomplishment of the permanent plan for the juveniles; and the bond between the juveniles and respondent. *See* N.C.G.S. § 7B-1110(a)(2), (3), (4).

It is clear that a trial court must *consider* all of the factors in section 7B-1110(a). Here, the transcript of the hearing demonstrates that the trial court did, in fact, carefully consider each of the statutory criteria listed in N.C.G.S. § 7B-1110(a). The statute does not, however, explicitly require written findings as to each factor. Although the better practice would have been for the trial court to make written findings as to the statutory factors identified by BCS, we are unable to say that the trial court's failure to do so under the unique circumstances of this case constitutes reversible error.[4]

First, there was no conflict in the evidence regarding the likelihood of adoption. Indeed, the sole purpose of the petition to terminate respondent's parental rights was so that Amy and Ann could be adopted by the prospective adoptive family. Second, it was undisputed that no bond existed between respondent and the children. Third, because this was a private termination proceeding, there was no "permanent plan" for Amy and Ann within the meaning of N.C.G.S. § 7B-1110(a)(3). Accordingly,

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3. Indeed, we observe that at the conclusion of the hearing, the trial court clearly indicated that it was still "contemplating" the evidence and that it intended to "mull" over the case before reaching a decision, thus making it clear to the parties that its findings were subject to change prior to final entry of judgment.

4. We do, however, take this opportunity to encourage trial courts to make written findings on all of the statutory factors set out in N.C.G.S. § 7B-1110(a) in the dispositional portions of orders ruling on petitions to terminate parental rights, so as to obviate arguments in future cases that a written finding was not made on a "relevant" factor under the statute.

a remand by this Court to the trial court for written findings on these uncontested issues—a disposition for which our dissenting colleague appears to be advocating—would be an elevation of form over substance and would serve only to delay the final resolution of this matter for the children.

[3] BCS also argues that the trial court erred in failing to give due consideration to the report of the children's guardian *ad litem* and her recommendation that respondent's parental rights be terminated. BCS contends that the guardian *ad litem*, once appointed, is the "eyes and ears of the court" and that the trial court should have relied at least in part on the report and testimony of the guardian *ad litem* in reaching its decision.

The trial court's order clearly states that it considered the report and testimony of the guardian *ad litem*. The court, however, was not bound by that recommendation. *See In re D.L.W.*, 368 N.C. at 843, 788 S.E.2d at 167–68 (stating that it is the trial judge's duty to consider all the evidence, pass upon the credibility of the witnesses, and determine the reasonable inferences to be drawn therefrom). Therefore, because the trial court possesses the authority to weigh all of the evidence, the mere fact that it elected not to follow the recommendation of the guardian *ad litem* does not constitute error.[5]

[4] Finally, BCS asserts that the trial court's refusal to terminate respondent's parental rights was an arbitrary and capricious decision and constitutes an abuse of discretion. We disagree.

Our Juvenile Code provides "procedures for the hearing of juvenile cases that assure fairness and equity and that protect the constitutional rights of juveniles and parents" and aims to "develop a disposition in each juvenile case that reflects consideration of the facts, the needs and limitations of the juvenile, and the strengths and weaknesses of the family." N.C.G.S. § 7B-100(1), (2) (2017). One of the stated policies of the Juvenile Code is to prevent "the unnecessary or inappropriate separation of juveniles from their parents." N.C.G.S. § 7B-100(4). However, although parents have a constitutionally protected interest in the care

5. BCS also asserts in its brief that the trial court's decision not to terminate respondent's parental right was due to its "personal bias against [BCS], or perhaps adoption agencies in general." We decline, however, to review this claim. "In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion . . . ." N.C. R. App. P. 10(a)(1). Here, BCS did not move for Judge Cureton to recuse himself from presiding over the case. Therefore, this issue was not preserved for our review.

and custody of their children and should not be unnecessarily or inappropriately separated from their children, "the best interests of the juvenile are of paramount consideration by the court and . . . when it is not in the juvenile's best interest to be returned home, the juvenile will be placed in a safe, permanent home within a reasonable amount of time." N.C.G.S. § 7B-100(5); *see also In re Montgomery*, 311 N.C. at 109, 316 S.E.2d at 251 ("[T]he fundamental principle underlying North Carolina's approach to controversies involving child . . . custody [is] that the best interest of the child is the polar star.").

Here, the trial court carefully weighed the competing goals of (1) preserving the ties between the children and their biological relatives; and (2) achieving permanence for the children as offered by their prospective adoptive family. In addition to the statutory factors set out in N.C.G.S. § 7B-1110(a)(1)–(5), the trial court also considered other relevant circumstances—as it was permitted to do under N.C.G.S. § 7B-1110(a)(6)—such as the fact that (1) Amy and Ann were relinquished to BCS solely at the behest of their mother; (2) respondent was never afforded the opportunity to parent Amy and Ann or provide for their care prior to their relinquishment; (3) upon learning of Amy and Ann's birth, respondent "proactively" attempted to establish paternity; (4) respondent desired that Sarah gain legal custody of the juveniles and Sarah was willing and able to provide a placement for Amy and Ann until respondent was released from incarceration; and (5) Sarah had previously cared for the juveniles and "did a good job" in doing so. The trial court further noted the strides in self-improvement that respondent had made during his incarceration.[6]

To be sure, evidence existed that would have supported a contrary decision. But this Court lacks the authority to reweigh the evidence that was before the trial court. We are satisfied that the trial court's conclusion that termination of respondent's parental rights was not in the children's best interests was neither arbitrary nor manifestly unsupported by reason.[7] Our analysis must end there.

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6. Oddly, despite acknowledging that the General Assembly has expressly authorized trial courts through N.C.G.S. § 7B-1110(a)(6) to also consider "[[a]ny relevant consideration" in addition to the factors enumerated in N.C.G.S. § 7B-1110(a)(1)–(5), the dissent then proceeds to take the trial court to task for doing just that.

7. Although the dissent asserts that the trial court erroneously focused its analysis on the best interests of *respondent*, the trial court expressly found that the termination of respondent's parental rights would not be in the best interests of the *children*.

Conclusion

For the reasons stated above, we affirm the 20 December 2018 order of the trial court denying BCS's petition to terminate respondent's parental rights.

AFFIRMED.

Justice NEWBY dissenting.

The majority muddles the analysis between the adjudicatory stage and the dispositional stage of termination of parental rights proceedings, inappropriately considering fairness to the parent at a stage in the proceedings where the statutory mandate says the best interests of the children should control. The trial court used an unnaturally broad reading of the term "relevant" in the section 7B-1110(a)(6) catchall provision while ignoring the requirement that it make written findings on all statutorily mandated factors. *See* N.C.G.S. § 7B-1110(a) (2017). Because the majority upholds the trial court's misapplication of the relevant statute, these children will be removed from the parents with whom they have bonded. I respectfully dissent.

We review a trial court's decision of whether to terminate parental rights for abuse of discretion. *In re Z.L.W.*, 831 S.E.2d 62, 64 (N.C. 2019). A trial court's misapplication of the law is an abuse of discretion. *See Koon v. United States*, 518 U.S. 81, 100, 116 S. Ct. 2035, 2047 (1996) (explaining that trial courts by definition abuse their discretion when they make errors of law). The trial court below abused its discretion because it misapplied the statutory scheme for terminating parental rights. At the dispositional stage, when the statute requires trial courts to consider only the children's interests, the trial court improperly weighed factors related to a parent's interest, which may only be considered at the adjudicatory stage. Further, the trial court did not make the required written findings on all relevant statutory criteria under section 7B-1110(a) as it determined the best interests of the children.

The trial court and the majority rewrite the carefully crafted statutory scheme, where factors weighing in the father's favor are properly considered only at the adjudicatory stage, not the dispositional stage. This Court has held that North Carolina's statutory scheme adequately safeguards parents' rights. *See In re Adoption of S.D.W.*, 367 N.C. 386, 394, 758 S.E.2d 374, 380 (2014) (explaining that "North Carolina has adopted a statutory framework designed to protect both the interests of

biological fathers in their children and the children's interest in prompt and certain adoption procedures."). In this case, respondent's interests are safeguarded by section 7B-1111(a) and the children's interests are safeguarded by section 7B-1110(a). *See* N.C.G.S. § 7B-1111(a) (2017). Section 7B-1111(a) controls the adjudicatory stage, when the court determines whether grounds exist, based on parents' behavior, to terminate parental rights. It is the only stage where a parent's interests are considered. There is no dispute that grounds existed under that provision to terminate respondent's parental rights. The adjudicatory stage is complete. The dispositional stage of the proceedings at issue here is controlled by section 7B-1110(a), which is governed by the best interests of the children.

Section 7B-1110(a) establishes criteria for courts to consider when determining whether it is in a child's best interests to terminate a party's parental rights. These criteria include: (1) the age of the juvenile; (2) the likelihood of adoption of the juvenile; (3) whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile; (4) the bond between the juvenile and the parent; (5) the quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement; and (6) any relevant consideration. *Id.* At this stage, "any relevant consideration" is constrained to those factors affecting the best interests of the children. A trial court must consider each of these six criterion and must make written findings on all that are "relevant." *Id.*

The trial court appears to have mentioned each of the criteria listed in section 7B-1110(a), and, based on its own oral findings, every one of those criteria weighed in favor of terminating the father's parental rights. The majority seems to agree. The guardian *ad litem*, who is uniquely tasked with understanding and advocating for the children's best interests, also believed respondent's parental rights should be terminated. The trial court, however, ignored all this. In considering criterion (6), the catchall, the trial court packed its analysis with a number of legally irrelevant considerations, and allowed those to outweigh all else.

The trial court, in both its oral and written findings, emphasized the following: that the father never had the chance to develop a relationship with the children; that the father's failed paternity filing was not really his fault; and that the father had no say in the development of the relationship between the children and the prospective adoptive family. These considerations speak to whether terminating respondent's parental rights would be fair to him, not the best interests of the children.

Certainly section 7B-1110(a)(6) allows the court to consider "[a]ny relevant consideration." N.C.G.S. § 7B-1110(a)(6) (2017). But these three words should not be read in a vacuum. Section 7B-1110(a) itself provides guidance. It explains that these criteria help courts determine whether terminating parental rights is in the *child's best interest*. N.C.G.S. § 7B-1110(a) (directing courts to "determine whether terminating the parent's rights is in the juvenile's best interest" by "consider[ing] the [six] criteria"). So, "[a]ny relevant consideration" includes only those criteria bearing on the children's interests, particularly when section 7B-1100(3) unambiguously elevates the children's interests above any conflicting ones of a parent in the proceedings. N.C.G.S. § 7B-1100(3) (2017) ("Action which is in the best interests of the juvenile should be taken in all cases where the interests of the juvenile and those of the juvenile's parents or other persons are in conflict.").

Some of the trial court's additional considerations do pass the relevance test under section 7B-1110(a). For example, the trial court noted that the children's aunt was willing and able to care for them. This consideration is relevant because it affects the quality of the children's lives if respondent's parental rights are not terminated.

But the aunt's willingness and capability alone fall far short of vindicating the trial court's misapplication of the statutory scheme. The trial court's ability to assess "[a]ny relevant consideration" allows some flexibility to examine the particulars of each of the many diverse cases that come before it. It does not, however, give courts unbridled discretion. Catchall provisions like this one should rarely, if ever, be powerful enough to control the outcome when every other specifically enumerated criterion would demand a different result. If it could, the General Assembly would have no need to list any criteria and could simply place the decision in the unbridled discretion of the trial court. Instead, the General Assembly has created a statutory scheme that is much more precise. The trial court and the majority fail to properly apply that scheme.

Relatedly, the trial court abused its discretion by failing to make the required written findings on all "relevant" criteria under section 7B-1110(a). The majority incorrectly assumes that "relevant" criterion are only those that are contested in the particular case. That is incorrect. "Relevant" simply describes those criterion which influence the trial court's decision, even if the nature of the criteria are undisputed. *See Relevant*, *Black's Law Dictionary* (11th ed. 2019) (defining "relevant" as "[l]ogically connected and tending to prove or disprove a matter in issue; having appreciable probative value—that is, rationally tending to persuade people of the probability or possibility of some alleged fact").

In this case, criteria (1) through (5) are all relevant. The children are young, they are likely to be adopted, adoption is part of their permanent plan, there exists no bond between the children and respondent, and the children's relationship with the prospective adoptive parents is strong. In fact, the trial court identified all of these criteria in the way just described. Every one of those criteria bear on whether it would be in the children's best interests to terminate the father's parental rights—the only issue in this case.

But it appears that the trial court omitted written findings on three out of the five criteria. It found that the children are very young and that they have a strong relationship with the adoptive parents, but failed to make findings under (2), (3), and (4). *See* N.C.G.S. § 7B-1110. The trial court thus failed to follow the controlling statute properly.

Though section 7B-1110(a) grants some discretion to trial courts, it immediately directs that discretion down a specific path. The trial court did not stay on that path. And on its detour, it diminished criteria it by statute must elevate. Whereas the dispositional phase should be guided by the children's best interests, here the majority's decision upholds the trial court's subjective consideration of the father's rights.

For these reasons, I respectfully dissent.

IN THE MATTER OF C.B.C.

No. 115A19

Filed 27 September 2019

Termination of Parental Rights—grounds—neglect and willful abandonment

The trial court properly terminated a father's parental rights on the grounds of willful abandonment where the father made no effort to pursue a relationship with his daughter during the six months preceding the filing of the petition. Although the trial court may consider conduct outside the six-month window in evaluating a parent's credibility and intentions, the determinative period for adjudicating willful abandonment is the six months preceding the petition.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from an order entered 13 December 2018 by Judge Monica M. Bousman in District Court,

Wake County. This matter was calendared in the Supreme Court on 11 September 2019 but determined on the records and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

Manning, Fulton & Skinner, P.A., by Michael S. Harrell, for petitioner-appellees.

J. Thomas Diepenbrock for respondent-appellant father.

HUDSON, Justice.

Respondent appeals from the trial court's order terminating his parental rights to his minor child, C.B.C. (Catherine),[1] on the grounds of neglect and willful abandonment. We affirm.

Respondent is the biological father of Catherine and petitioners are the maternal grandparents. In 2010, respondent and Catherine's biological mother, J.F., were involved in a relationship when J.F. became pregnant with Catherine. In March 2011, before Catherine's birth, respondent was convicted of felony theft charges and began serving a 15 month sentence.

J.F. gave birth to Catherine on 26 June 2011, and moved in with petitioners in July 2011. During respondent's incarceration, J.F. brought Catherine to visit him in prison "a few" times, and she sent him pictures of Catherine. Respondent finished serving his sentence in June 2012.

After his release, respondent had limited visitation with Catherine until J.F. passed away from a suspected accidental drug overdose on 7 July 2012. Following J.F's death, respondent and petitioners became involved in a custody dispute, and petitioners were granted temporary custody of Catherine, with respondent having visitation. On 19 November 2015, the trial court entered a permanent child custody order granting petitioners legal and physical custody of Catherine and ordering that respondent have no right to visitation. At the time the order was entered, respondent was incarcerated for felony breaking and entering and misdemeanor assault and had a projected release date of 16 October 2016. In the decretal section of the custody order, the trial court provided that respondent may petition the court for visitation after his release from incarceration as long as he could demonstrate to the court that his ongoing substance abuse and mental health issues

1. A pseudonym is used to protect the identity of the juvenile and for ease of reading. *See* N.C.R. App. P. 42(b)(1).

had been appropriately addressed. The custody order also provided that respondent may continue to communicate in writing with Catherine, and that petitioners "shall deliver all appropriate communications" to Catherine.

On 4 March 2016, petitioners filed a petition to terminate respondent's parental rights alleging the grounds of dependency and willful abandonment. *See* N.C.G.S. § 7B-1111(a)(6) and (7) (2017). Respondent participated in the hearing held 13 July 2017 and opposed the termination of his parental rights. On 21 September 2017, the trial court entered an order denying the petition. The trial court found that respondent "ha[d] consistently attempted to assert custodial rights with respect to [Catherine] and ha[d] consistently desired to maintain a relationship with her." The trial court also found that there was no evidence that respondent's substance abuse issues rendered him incapable of providing for Catherine's care, and that respondent's "periodic imprisonments [did] not constitute a 'disability' or clear, cogent and convincing evidence of incapability."

On 31 August 2017, respondent was charged with multiple felonies, including larceny of firearms and breaking and entering. Respondent spent approximately three weeks in jail before he posted bond. He remained out of jail from September 2017 through March 2018. In April 2018, respondent pled guilty to multiple felonies resulting from the August 2017 charges, and began serving his active sentence. Respondent's projected release date is in April 2022.[2]

Petitioners filed a second petition to terminate respondent's parental rights on 12 June 2018 alleging the grounds of neglect, dependency, and willful abandonment. *See* N.C.G.S. § 7B-1111(a)(1), (6), and (7). Following a 30 October 2018 hearing, the trial court entered an order on 13 December 2018, finding that grounds existed to terminate respondent's parental rights based on neglect and willful abandonment, and that termination was in Catherine's best interests. Accordingly, the trial court terminated respondent's parental rights. Respondent gave timely notice of appeal to this Court pursuant to N.C.G.S. §§ 7A-27(a)(5) and 7B-1001(a1)(1) (2017).

Our Juvenile Code provides for a two-stage process for the termination of parental rights. N.C.G.S. §§ 7B-1109, -1110 (2017). At the

2. Respondent testified at the hearing that his projected release date is 2 April 2020, while later arguments by counsel, and the trial court's finding of fact indicate a projected release date in 2022. Respondent does not challenge this finding.

adjudicatory stage, the petitioner bears the burden of proving by "clear, cogent, and convincing evidence" the existence of one or more grounds for termination under section 7B-1111(a) of the General Statutes. N.C.G.S. § 7B-1109(f). "If [the trial court] determines that one or more grounds listed in section 7B-1111 are present, the court proceeds to the dispositional stage, at which the court must consider whether it is in the best interests of the juvenile to terminate parental rights." *In re D.L.W.*, 368 N.C. 835, 842, 788 S.E.2d 162, 167 (2016) (citing *In re Young*, 346 N.C. 244, 247, 485 S.E.2d 612, 614–15 (1997); N.C.G.S. § 7B-1110).

We review a trial court's adjudication under N.C.G.S. § 7B-1109 "to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law." *In re Montgomery*, 311 N.C. 101, 111, 316 S.E.2d 246, 253 (1984) (citation omitted). The trial court's conclusions of law are reviewable de novo on appeal. *In re S.N.*, 194 N.C. App. 142, 146, 669 S.E.2d 55, 59 (2008), *aff'd per curiam*, 363 N.C. 368, 677 S.E.2d 455 (2009) (citation omitted).

Respondent first argues that the trial court erred in concluding grounds existed to terminate his parental rights based on willful abandonment. We conclude otherwise.

A trial court may terminate a parent's parental rights when "[t]he parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition or motion[.]" N.C.G.S. § 7B-1111(a)(7). "Abandonment implies conduct on the part of the parent which manifests a willful determination to forego all parental duties and relinquish all parental claims to the child." *In re Young*, 346 N.C. at 251, 485 S.E.2d at 617 (citation omitted). "Wilful [sic] intent is an integral part of abandonment and this is a question of fact to be determined from the evidence." *Pratt v. Bishop*, 257 N.C. 486, 501, 126 S.E.2d 597, 608 (1962). "[I]f a parent withholds [that parent's] presence, [ ] love, [ ] care, the opportunity to display filial affection, and willfully [sic] neglects to lend support and maintenance, such parent relinquishes all parental claims and abandons the child." *Id.* at 501, 126 S.E.2d at 608.

Here, the relevant six-month period preceding the petitioners' filing of the petition is 12 December 2017 to 12 June 2018. Respondent was incarcerated for approximately three of the relevant six months. However, the Court of Appeals has held[3] that "incarceration, standing alone, is neither a sword nor a shield in a termination of parental rights decision. . . . Although a parent's options for showing affection while

3. This Court has not previously addressed this issue.

incarcerated are greatly limited, a parent *will not be excused from showing interest in [the] child's welfare by whatever means available.*" *In re D.E.M.*, 810 S.E.2d 375, 378 (N.C. Ct. App. 2018) (citations and internal quotation marks omitted).

The trial court made the following findings of fact regarding abandonment:

> 9. From the time the Respondent bonded out on his felony charges in mid-September, 2017 until March 2018, the Respondent earned $600 per week performing repairs and handy man services. Despite earning regular income, the Respondent sent no support to or on behalf of [Catherine] during the same time period. The Respondent paid no support to or on behalf of [Catherine] since the time of this [c]ourt's last hearing in July, 2017 through the time of this proceeding.
>
> 10. The Respondent made no efforts to communicate with [Catherine] from the time of this [c]ourt's last hearing in July, 2017 to the time of the Petitioners' filing of their Petition on June 12, 2018. The Respondent did send one birthday card to [Catherine] from prison after he had been served with the Petitioners' termination petition. Otherwise the Respondent made no efforts to communicate with [Catherine] since the time of the July, 2017 hearing despite Judge Walczyk's 2015 Custody Order providing him the opportunity to send written communications to [Catherine]. Prior to his incarceration in March 2018 following a guilty plea, Respondent had a telephone, access to transportation, had his own vehicle, and had access to a post office. Respondent testified that he or his girlfriend mailed cards to the child prior to March 2018. His testimony was uncertain as to when and how many cards were sent. His testimony was contradictory and is not credible. After his incarceration in March 2018, he received approximately five (5) cards per month from the prison chaplain at no cost to him. He used only one of these cards to mail to [Catherine] and this card was mailed after he was served with the petition to terminate his parental rights.
>
> 11. The Respondent made no effort from the time of this [c]ourt's hearing in July, 2017 through the time of this hearing to contact either of the Petitioners to determine how

> [Catherine] was doing, how her health was, how she was doing in school, or any other inquiry regarding her well-being. The Petitioners continue to reside at the address that they resided at the time of the July, 2017 hearing and continue to have the same telephone numbers and contact information since the time of that hearing. The Petitioners did not prevent the Respondent from contacting them in order for the Respondent to obtain information about [Catherine]. Judge Walczyk's Custody Order does not contain any prohibition on the Respondent contacting the Petitioners to obtain information concerning [Catherine].
>
> 12. Since the time of this [c]ourt's hearing in July, 2017 the Respondent has taken no steps to have Judge Walczyk's 2015 Custody Order reviewed, modified or to otherwise present evidence to that [c]ourt that he has complied with the conditions of the 2015 Custody Order that would permit him once again to have visitation with [Catherine].
>
> 13. Respondent has willfully withheld his love, care, and affection from the child. He has done nothing to attempt to develop and maintain a relationship with her since his last release from prison in November 2016. He has not attempted to resume any direct contact with the child in compliance with the permanent custody order. He has not attempted to resume and [sic] parental rights or responsibility for the child. He has abandoned and neglected the child. There is a reasonable probability that he will continue to neglect the child in the future.

Respondent challenges finding of fact number 13 as not being supported by clear and convincing evidence. Specifically, respondent objects to the portion of the finding stating that he has willfully withheld his love, care, and affection and "has done nothing to attempt to develop and maintain a relationship with [Catherine]" since his release from incarceration in November 2016. Respondent argues that after his November 2016 release, he opposed the first petition to terminate his parental rights, and he sent a birthday card to Catherine in June 2018 after he had been served with the second termination petition.

However, respondent's participation in the first termination hearing in 2017 did nothing to aid in the development or continuation of his relationship with Catherine. Indeed, following the denial of the petition, respondent did not send Catherine any cards or letters, and did not take

any steps to resume visitation with her. Additionally, respondent's opposition to the original petition to terminate his parental rights does not preclude the trial court from later finding that he has willfully withheld his love, care, and affection from Catherine during the determinative six-month period. While the trial court found that respondent sent one card to Catherine after being served with the termination petition in June 2018, the court also found that the card was sent outside of the relevant six-month period, and thus not determinative in adjudicating willful abandonment under N.C.G.S. § 7B-1111(a)(7). *See also In re D.M.O.*, 794 S.E.2d 858, 861 (N.C. Ct. App. 2016) ("[T]he '*determinative*' period for adjudicating willful abandonment is the six consecutive months preceding the filing of the petition." (emphasis added) (citing *In re Young*, 346 N.C. at 251, 485 S.E.2d at 617)).

Nevertheless, even setting aside the portion of finding of fact number 13 stating that respondent has done nothing to attempt to develop or maintain a relationship with Catherine since his release from prison in 2016, there are ample other findings demonstrating that respondent had no contact with Catherine or petitioners for nearly one year prior to the filing of the termination petition on 12 June 2018, and that he had the ability to make at least some contact during that time but chose not to. Respondent has not challenged these findings, and they are binding on appeal. *See Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) ("Where no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal.").

Respondent argues that the evidence and findings of fact do not support the court's conclusion that he willfully abandoned Catherine because his actions do not evince "a settled purpose to forego all parental duties or to relinquish all parental claims" to Catherine. Respondent further contends that it was "imperative" the trial court consider his actions over the years leading up to the termination petition in order to determine whether his actions demonstrated a settled purpose to forego all parental duties. Respondent maintains that he has consistently sought a relationship with Catherine since 2012, and argues that his "longstanding and continuing efforts and actions to pursue a relationship with his daughter negate the trial court's conclusion that he willfully abandoned her."

However, while "the trial court may consider a parent's conduct outside the six-month window *in evaluating a parent's credibility and intentions*, the 'determinative' period for adjudicating willful abandonment is the six consecutive months preceding the filing of the petition."

In re D.M.O., 794 S.E.2d at 861 (N.C. Ct. App. 2016) (emphasis added) (internal citations, quotation marks, and alterations omitted); N.C.G.S. § 7B-1111(a)(7). Thus, while the court may consider respondent's prior efforts in seeking a relationship with Catherine to determine his credibility and intentions, respondent's prior actions will not preclude a finding that he willfully abandoned Catherine pursuant to N.C.G.S. § 7B-1111(a)(7) if he did nothing to maintain or establish a relationship with Catherine during the determinative six-month period. *See In re B.S.O.*, 234 N.C. App. 706, 713 n.4, 760 S.E.2d 59, 65 n.4 (2014) (disregarding the respondent-father's assertion that he had "close contact" with his children and the social worker prior to his deportation in determining whether he willfully abandoned the children because it occurred outside the six-month period).

Here, the findings demonstrate that in the six months preceding the filing of the termination petition, respondent made no effort to pursue a relationship with Catherine. The trial court found that respondent did not send any cards or letters to Catherine, did not contact petitioners to inquire into Catherine's well-being, did not take any steps to modify the custody order or resume visitation after the trial court's denial of the first termination petition, and did not provide financial support for Catherine despite earning $600 per week from September 2017 until he was incarcerated in March 2018. The trial court also found that although respondent received five free cards per month while in custody, he only sent Catherine one card after being served with the termination petition.

These uncontested findings demonstrate that respondent willfully withheld his love, care, and affection from Catherine and that his conduct during the determinative six-month period constituted willful abandonment. *See In re B.S.O.*, 234 N.C. App. at 711, 760 S.E.2d at 64 (affirming termination of the respondent-father's parental rights based on willful abandonment where, in the relevant six-month period, the respondent-father "made no effort" to remain in contact with the children or their caretakers and did not provide anything toward their support). Accordingly, the trial court did not err in terminating respondent's parental rights pursuant to N.C.G.S. § 7B-1111(a)(7).

The trial court's conclusion that grounds existed pursuant to N.C.G.S. § 7B-1111(a)(7) is sufficient in and of itself to support termination of respondent's parental rights. *See In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 426 (2003) (citation omitted) ("A finding of any one of the enumerated grounds for termination of parental rights under N.C.G.S. 7B-1111 is sufficient to support a termination."). Respondent

did not challenge the trial court's determination that termination was in Catherine's best interests. Accordingly, we affirm the trial court's order terminating respondent's parental rights.

AFFIRMED.

IN THE MATTER OF C.M.C.

No. 109A19

Filed 27 September 2019

Termination of Parental Rights—orders—signed by judge who did not preside over hearing—nullity

Where the adjudication and disposition orders in a termination of parental rights case were signed by a judge who did not preside over the hearing and the mother subsequently noted appeal from those orders, those orders were a nullity, and the mother's notice of appeal did not divest the district court of the authority to enter further orders in the case. The judge who signed the orders did not err by vacating them, and the trial court that presided over the hearing then had the authority to enter the orders terminating the mother's parental rights.

On writ of certiorari pursuant to N.C.G.S. § 7A-31-32(b) to review orders entered on 7 December 2018 by Judge Kristina L. Earwood in District Court, Haywood County. This matter was calendared in the Supreme Court on 11 September 2019 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

Jordan R. Israel for petitioner-appellee Haywood County Health and Human Services Agency.

Alston & Bird LLP, by Sarah R. Cansler, for appellee Guardian ad Litem.

David A. Perez for respondent-appellant mother.

ERVIN, Justice.

Respondent-mother Heather C. appeals from an order entered by the trial court terminating her parental rights in her daughter C.M.C.[1] After careful consideration of respondent-mother's challenge to the trial court's termination orders in light of the record and the applicable law, we conclude that the trial court's orders should be affirmed.

On 19 September 2017, the Haywood County Health and Human Services Agency filed a petition alleging that Caroline was an abused, neglected and dependent juvenile. The HHSA had received a report on 29 August 2017 that respondent-mother had given birth to Caroline in June 2017 while at home and without medical assistance; that Caroline had not received medical care since her birth; and that respondent-mother was using drugs. Respondent-mother and Rex C., Caroline's putative father, told the social workers responsible for investigating this report that Caroline had not received medical care because she did not have Medicaid and the couple could not afford a doctor. According to respondent-mother and the putative father, the couple and their family had always lived in Haywood County except for brief stints in Florida and Georgia, that their three other children lived with their maternal grandmother, and that neither respondent-mother nor the putative father had any pending criminal charges or prior history of child protective services involvement. Other information developed by the investigating social workers revealed, however, that the other children had been removed from the parents' care in North Dakota as the result of abuse-related concerns; that the North Dakota courts were about to terminate the parents' parental rights in two of their other children; and that the parents were being prosecuted in North Dakota for abusing those two children.

On 19 September 2017, Judge Monica H. Leslie entered an order granting non-secure custody of Caroline to the HHSA. Following the entry of the non-secure custody order, social workers and deputies employed by the Haywood County Sheriff's Office went to respondent-mother's home in order to search for Caroline. However, neither respondent-mother, the putative father, nor Caroline were present at the family home when the social workers and deputies arrived. On 20 September 2017, respondent-mother, the putative father, and Caroline were found in the basement of a family friend's residence. At that point, Caroline was taken into HHSA custody and admitted to the hospital and respondent-mother and the putative father were arrested on the basis of

1. C.M.C. will be referred to throughout the remainder of this opinion as "Caroline," which is a pseudonym used to protect the identity of the juvenile and for ease of reading. *See* N.C. R. App. P. 42(b)(1).

warrants that had been issued against them in connection with the pending North Dakota child abuse charges. A subsequent medical examination revealed that Caroline had several fractured ribs and tested positive for the presence of controlled substances. Following her release from the hospital, Caroline was placed in foster care.

On 9 February 2018, the trial court entered an adjudication order finding Caroline to be an abused, neglected and dependent juvenile and determining that aggravating circumstances authorizing the immediate cessation of reunification efforts consisting of "[c]hronic physical or emotional abuse," "[t]orture," "[c]hronic or toxic exposure to alcohol or controlled substances that causes impairment of or addiction in the juvenile," and "[a]ny other act, practice, or conduct that increased the enormity or added to the injurious consequences of the abuse or neglect" existed. N.C.G.S. § 7B-901(c)(1)(b), (c) (e), (f) (2017). On the same date, the trial court entered a dispositional order placing Caroline in the custody of the HHSA, establishing a permanent plan of adoption with a concurrent permanent plan of guardianship with a relative or court-appointed caretaker, and relieving the HHSA from any further responsibility for attempting to reunify Caroline with respondent-mother and the putative father.

On 5 April 2018, the HHSA filed a petition seeking the entry of an order terminating the parental rights of respondent-mother, the putative father, and any unknown father in Caroline. The issues raised by the HHSA's termination petition came on for hearing before the trial court on 10 September 2018. At the conclusion of the hearing, the trial court announced that the parental rights of respondent-mother and the putative father in Caroline should be terminated, enunciated certain findings and conclusions that it wished to have included in the trial court's adjudication and dispositional orders, and requested counsel for the HHSA to draft the required written orders. On 16 October 2018, adjudication and disposition orders signed by Judge Leslie, rather than the trial court, were filed. On 13 November 2018, respondent-mother noted an appeal from these adjudication and dispositional orders to the Court of Appeals.[2]

On 15 November 2018, the HHSA filed a motion pursuant to N.C. R. Civ. P. § 1A-1, Rule 60 (2017) seeking the entry of an order vacating the adjudication and dispositional orders that had been filed on 16 October

2. Prior to 1 January 2019, appeals noted from orders granting or denying a motion or petition to terminate parental rights lay to the Court of Appeals rather than to this Court. N.C.G.S. § 7B-1001(a)(6) (2017).

2018 given that those orders had been signed by Judge Leslie rather than by the trial court. On 30 November 2018, Judge Leslie entered an order vacating the adjudication and dispositional orders that she had signed. On 7 December 2018, the trial court entered an adjudication order determining that respondent-mother's parental rights in Caroline were subject to termination because of abuse and neglect, failure to pay support, incapability, and abandonment, N.C.G.S. § 7B-1111(a)(1), (3), (6), (7), and that the putative father's parental rights in Caroline were subject to termination because of abuse and neglect, failure to legitimate, incapability, and abandonment.[3] N.C.G.S. § 7B-1111(a)(1), (5), (6), (7). In addition, the trial court entered a separate dispositional order in which it determined that the termination of respondent-mother's and the putative father's parental rights in Caroline would be in the juvenile's best interests.[4] Respondent-mother noted an appeal from the trial court's termination orders to the Court of Appeals. On 24 April 2019, this Court granted respondent-mother's petition seeking the issuance of a writ of certiorari authorizing review of the trial court's termination orders.

In her sole challenge to the trial court's termination orders, respondent-mother argues that the trial court erred by entering the challenged termination orders on the grounds that Judge Leslie lacked the authority to vacate the earlier termination orders which she had inadvertently signed given that respondent-mother had already noted an appeal from Judge Leslie's earlier termination orders. We do not find respondent-mother's argument persuasive.

According to N.C.G.S. § 1A-1, Rule 60(b), a trial judge is entitled to grant relief from any judgment or order that, among other things, was entered by mistake or inadvertence, where the judgment is void, or where there is "[a]ny other reason justifying relief from the operation of the judgment." N.C.G.S. § 1A-1, Rule 60(b)(1), (4), (6). A trial judge does not have jurisdiction to rule upon a motion for relief from judgment made pursuant to N.C.G.S. § 1A-1, Rule 60(b) once an appeal has been noted from the relevant order. *Wiggins v. Bunch*, 280 N.C. 106, 184 S.E.2d 879 (1971). Respondent-mother contends that, since she had already given notice of appeal from the initial set of termination orders, Judge Leslie lacked the authority to vacate those orders given that her action in vacating them constituted a substantive modification of those

3. After the putative father's paternity of Caroline had been established by means of DNA testing, the HHSA dismissed its termination petition as to the unknown father.

4. The putative father has not noted an appeal from either set of termination orders and is not a party to the proceedings before this Court.

earlier orders rather than the correction of a clerical error. The HHSA argues, on the other hand, that, since Judge Leslie did not preside over the termination hearing, the first set of termination orders had never been properly entered in accordance with N.C.G.S. § 1A-1, Rule 58 (2017) and were, for that reason, a nullity. In light of that fact, the HHSA further asserts that respondent-mother's notice of appeal from the initial termination orders did not have the effect of divesting the District Court, Henderson County, of the authority to enter further orders in this case.

The Court of Appeals decided issues similar to the question before us in this case in *In re Whisnant*, 71 N.C. App. 439, 442, 322 S.E.2d 434, 435 (1984) and *In re Savage*, 163 N.C. App. 195, 198, 592 S.E.2d 610, 611 (2004), in both of which the orders terminating the parents' parental rights were vacated because they had been signed by a judge other than the individual who had presided over the termination hearing. According to the Court of Appeals, "an order terminating parental rights was a 'nullity' when signed by a judge other than the one who presided over the hearing," *In re Savage*, 163 N.C. App. at 197, 592 S.E.2d at 611 (quoting *In re Whisnant*, 71 N.C. App. at 441, 322 S.E.2d at 435), with this result stemming from the fact that N.C.G.S. § 1A-1, Rule 52 "requires a judge presiding over a non-jury trial to (1) make findings of fact, (2) state conclusions of law arising on the facts found, and (3) enter judgment accordingly." *In re Savage*, 163 N.C. App. at 197, 592 S.E.2d at 611 (citing *In re Whisnan*t, 71 N.C. App. at 441, 322 S.E.2d at 435). Since we believe that the reasoning adopted by the Court of Appeals in these cases was sound, we conclude that the initial termination orders signed by Judge Leslie were, as the HHSA contends, a nullity.

In further confirmation of the appropriateness of this result, we note that N.C.G.S. § 1A-1, Rule 58 provides that "a judgment is entered when it is reduced to writing, signed by *the* judge, and filed with the clerk of court." N.C.G.S. § 1A-1, Rule 58 (emphasis added). According to well-established North Carolina law, a party may not properly appeal from a judgment until it has been entered. *See Logan v. Harris*, 90 N.C. 7, 8 (1884); *see also* N.C. R. App. P. 3(c)1) (noting that appeals must be filed "within thirty days *after entry of judgment*" (emphasis added)). Thus, we conclude that the initial termination orders signed by Judge Leslie were a nullity for this reason as well.

In view of the fact that no viable adjudication and termination orders were actually entered on 16 October 2018, the appeal that respondent-mother noted from those orders did not have the effect of divesting the District Court, Henderson County, of the authority to enter further orders in this case, including the entry of additional orders correcting

the error worked by Judge Leslie's decision to sign orders in a termination of parental rights case in which she had not presided over the adjudication and dispositional hearing. *Cf. Veazey v. City of Durham*, 231 N.C. 357, 367, 57 S.E.2d 377, 385 (1950) (stating, in discussing a statutory predecessor to the Rule of Civil Procedure, that, " 'when an appeal is taken as in this case from an interlocutory order from which no appeal is allowed by The Code [of Civil Procedure of 1868], which is not upon any matter of law and which affects no substantial right of the parties, it is the duty of the Judge to proceed as if no such appeal had been taken' " (quoting *Carleton v. Byers*, 71 N.C. 331, 335 (1874))). For this reason, Judge Leslie did not err by vacating the initial set of termination orders that she signed in this case and the trial court did not err by entering the set of termination orders which respondent-mother has sought to challenge before this Court. As a result, since the trial court had the authority to enter the challenged orders terminating respondent-mother's parental rights in Caroline and since respondent-mother has not advanced any other challenges to the validity of the trial court's termination orders, those orders are affirmed.

AFFIRMED.

IN RE INQUIRY CONCERNING A JUDGE, NO. 18-070

ANGELA C. FOSTER, RESPONDENT

No. 215A19

Filed 27 September 2019

Judges—judicial conduct—violations—censure

Where a district court judge, without a contempt hearing, ordered a party into temporary custody and threatened her teenage children in order to achieve compliance with a visitation order, the Supreme Court ordered that the judge be censured for violation of Canons 1, 2A, 3A(3), and 3A(4) of the N.C. Code of Judicial Conduct and for conduct prejudicial to the administration of justice that brought the judicial office into disrepute in violation of N.C.G.S. § 7A-376.

This matter is before the Court pursuant to N.C.G.S. §§ 7A-376 and -377 upon a recommendation by the Judicial Standards Commission entered on 23 May 2019 that respondent Angela C. Foster, a Judge of

the General Court of Justice, District Court Division, Judicial District Eighteen, be censured for conduct in violation of Canons 1, 2A, 3A(3), and 3A(4) of the North Carolina Code of Judicial Conduct, and for conduct prejudicial to the administration of justice that brings the judicial office into disrepute in violation of N.C.G.S. § 7A-376. This matter was calendared for argument in the Supreme Court on 28 August 2019, but was determined on the record without briefs or oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure and Rule 3 of the Rules for Supreme Court Review of Recommendations of the Judicial Standards Commission.

No counsel for Judicial Standards Commission or respondent.

ORDER

The issue before the Court is whether District Court Judge Angela C. Foster, respondent, should be censured for violations of Canons 1, 2A, 3A(3), and 3A(4) of the North Carolina Code of Judicial Conduct amounting to conduct prejudicial to the administration of justice that brings the judicial office into disrepute in violation of N.C.G.S. § 7A-376(b). Respondent has not challenged the findings of fact made by the Judicial Standards Commission (the Commission) or opposed the Commission's recommendation that she be censured by this Court.

On 22 August 2018, Commission Counsel filed a Statement of Charges against respondent alleging that she had engaged in conduct inappropriate to her judicial office by making inappropriate comments; by failing to remain patient, dignified, and courteous with the parties appearing before her; by failing to provide every person legally interested in a proceeding, or the person's lawyer, the full right to be heard according to the law; and by abusing the contempt power. Respondent fully cooperated with the Commission's inquiry into this matter. In the Statement of Charges, Commission Counsel asserted that respondent's actions constituted willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute or otherwise constituted grounds for disciplinary proceedings under Chapter 7A, Article 30 of the North Carolina General Statutes.

Respondent filed her answer on 11 September 2018. On 26 March 2019, Commission Counsel and respondent entered into a Stipulation and Agreement for Stated Disposition (the Stipulation) containing joint evidentiary, factual, and disciplinary stipulations as permitted by Commission Rule 22 that tended to support a decision of censure.

The Stipulation was filed with the Commission on 2 April 2019. The Commission heard this matter on 12 April 2019 and entered its recommendation that same day, which contains the following stipulated findings of fact:

> 1. On or about January 2, 2018, Respondent presided over a contempt hearing in *Morrow v. Livesay*, Guilford County File No. 15CVD5571. The matter was calendared by the defendant Jeffery Livesay against the plaintiff Kathi Morrow, to determine whether Ms. Morrow should be held in contempt after the parties' fifteen (15) year old twin sons, who reside with her, refused to visit with their father Mr. Livesay during the winter holiday.
>
> 2. At the contempt hearing on or about January 2, 2018, Ms. Morrow's counsel appeared on her behalf and objected to the court's consideration of the contempt motion on the grounds that Ms. Morrow received insufficient notice of the hearing.
>
> 3. Respondent acknowledged counsel's objection as to timely notice of the hearing, but instead of continuing the matter, ordered Ms. Morrow and the twin boys to appear in court within thirty (30) minutes. At that time, Respondent stated that "I'm not saying that we're going through with the hearing, but you need to call your client and tell her to get here because I have a few choice words that I need to say to her . . . ." Respondent further stated that "the boys need to come . . . so that they can hear that their mother can go to jail for their behavior . . . "[a]nd [sic] if a child wants their parent to go to jail, I got a problem with that as well."
>
> 4. When Ms. Morrow and the teenage twin boys arrived, Respondent convened the hearing again and asked Ms. Morrow and her sons to stand, and swore them in as if to give testimony. At that time, Respondent began to question the two boys regarding their refusal to participate in the court ordered visitation with their father and inquired of the boys whether they understood that their mother could be incarcerated for contempt if they continued to resist visitation with their father.
>
> 5. After the boys told Respondent that they would rather have their mother go to jail than visit with their

father, Respondent became deeply concerned and stated "my children would never allow me to go to jail for any reason whatsoever . . . I'm appalled because my children respect me so much they would never allow that to happen." Respondent vigorously questioned and explained the profound significance and detrimental impact their refusal to visit with their father would have on themselves and their mother.

6. After hearing from the boys that they had an understanding of the consequences of their refusal to comply with a court order, Respondent then ordered the bailiff to handcuff Ms. Morrow and place her in a holding cell. Ms. Morrow's counsel immediately objected to the decision to put her into custody because no contempt hearing had taken place and neither counsel nor his client were given an opportunity to be heard. Respondent nevertheless instructed the bailiff to take Ms. Morrow to a holding cell over her counsel's objections.

7. After Ms. Morrow was handcuffed and removed from the courtroom, Respondent again asked the twin boys to stand and then proceeded to convey to them how "appalled" she was at their behavior and how "ashamed" they should be of themselves for allowing their mother to go to jail for their behavior. During this colloquy, Respondent also lectured the twin boys about her personal experiences as a parent as well as her experiences as a certified juvenile judge. Respondent shared personal stories, as well as disturbing cases she had presided over where children had suffered unfortunate outcomes.

8. Respondent informed the boys that if their mother was found in contempt, she would go to jail for sixty (60) days and explained that meant they would be in their father's custody for that entire time. Respondent appealed to the boys' sense of reason by questioning whether it made more sense to spend six (6) days of visitation with their father as originally ordered, or sixty (60) days while their mother was incarcerated. The boys finally relented and agreed to visit their father.

9. After reaching this understanding with the boys, Respondent then asked to have Ms. Morrow brought back

into the courtroom and commented "as far as your full-blown hearing, it is going to be continued. You two need to pick a date because I do not believe that you [had] enough time to truly prepare."

10. At the conclusion of the hearing, both parties thanked Respondent for her efforts trying to resolve the boys' refusal to visit with their father.

11. Respondent believed that her actions in ordering Ms. Morrow to be handcuffed and put into custody without a hearing, opportunity to be heard, or written order were appropriate to deescalate an unfortunate situation and resolve the visitation issues without further involving the Court. Respondent has previously placed litigants in temporary custody for a short "cooling-off period" without an opportunity to be heard and found that practice to be successful in getting litigants to comply with the Court's directives. After such temporary detention, Respondent typically offers the litigant an opportunity to apologize to the Court in lieu of facing a contempt hearing and a jail sentence.

12. Respondent acknowledges that she specifically intended to have Ms. Morrow handcuffed and taken into custody without a hearing and that this decision was an improper or wrongful use of the power of her judicial office and that she knew or should have known that doing so was beyond the legitimate exercise of her authority.

(Brackets in original and citations to pages of the Stipulation omitted.)

Based on these findings of fact, the Commission concluded as a matter of law that:

1. Canon 1 of the Code of Judicial Conduct sets forth the broad principle that "[a] judge should uphold the integrity and independence of the judiciary." To do so, Canon 1 requires that a "judge should participate in establishing, maintaining, and enforcing, and should personally observe, appropriate standards of conduct to ensure that the integrity and independence of the judiciary shall be preserved."

2. Canon 2 of the Code of Judicial Conduct generally mandates that "[a] judge should avoid impropriety

in all the judge's activities." Canon 2A specifies that "[a] judge should respect and comply with the law and should conduct himself/herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

3. Canon 3 of the Code of Judicial Conduct governs a judge's discharge of his or her official duties. Canon 3A(3) requires a judge to be "patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in the judge's official capacity . . . . . [sic]" Canon 3A(4) requires a judge to "accord every person who is legally interested in a proceeding, or the person's lawyer, full right to be heard according to law . . . ."

4. Upon the Commission's independent review of the stipulated facts concerning Respondent's conduct on January 2, 2018 in presiding over the contempt hearing in *Morrow v. Livesay*, Guilford County File No. 15CVD5571, and the audio and transcript thereof included with the Stipulation, the Commission concludes that Respondent:

a. failed to personally observe appropriate standards of conduct necessary to ensure that the integrity of the judiciary is preserved, in violation of Canon 1 of the North Carolina Code of Judicial Conduct;

b. failed to conduct herself in a manner that promotes public confidence in the integrity of the judiciary, in violation of Canon 2A of the North Carolina Code of Judicial Conduct;

c. failed to be patient, dignified, and courteous to litigants, lawyers and others who she dealt with in her official capacity, in violation of Canon 3A(3) of the North Carolina Code of Judicial Conduct;

d. failed to afford every person who is legally interested in a proceeding, or the person's lawyer, a full right to be heard according to the law in violation of Canon 3A(4) of the North Carolina Code of Judicial Conduct.

13. [sic] The Commission also notes that Respondent agreed in the Stipulation that she violated the foregoing provisions of the North Carolina Code of Judicial Conduct.

14. The Commission further concludes that the facts establish that Respondent engaged in willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute in violation of N.C. Gen. Stat. § 7A-376(b). *See also* Code of Judicial Conduct, Preamble ("[a] violation of this Code of Judicial Conduct may be deemed conduct prejudicial to the administration of justice that brings the judicial office into disrepute.").

15. More than 40 years ago, the Supreme Court first defined "willful misconduct in office" as "improper and wrong conduct of a judge acting in his official capacity done intentionally, knowingly and, generally in bad faith. It is more than a mere error of judgment or an act of negligence." *In re Edens*, 290 N.C. 299, 305 (1976). As the Supreme Court further explained in *In re Nowell*, 293 N.C. 235 (1977), while willful misconduct in office necessarily encompasses "conduct involving moral turpitude, dishonesty, or corruption," it also can be found based upon "any knowing misuse of the office, whatever the motive." *Id.* at 248. The Supreme Court also found that "these elements are not necessary to a finding of bad faith. A specific intent to use the powers of the judicial office to accomplish a purpose which the judge knew or should have known was beyond the legitimate exercise of his authority constitutes bad faith." *Id.*

16. In keeping with this long-standing definition, the Commission finds that Respondent engaged in willful misconduct in office. In reaching this conclusion, the Commission does not review the legal issue of whether Ms. Morrow may properly have been held in contempt based on her sons' refusal to visit with their father. Respondent admits that she purposely avoided any legal ruling on the contempt issues before her and continued the hearing to a later date. Instead, the Commission considers Respondent's conduct in ordering Ms. Morrow into custody and then threatening the boys to achieve compliance with the visitation order without a contempt hearing to be intentional and willful.

17. The facts establish that Respondent acted with the specific intent to avoid what Respondent referred to

as a "full-blown hearing," which Respondent admitted could not properly go forward because of inadequate notice. The facts also establish that this conduct was not a mere "error of judgment or mere lack of diligence" but was intentional and part of Respondent's admitted pattern of ordering litigants into temporary custody to achieve compliance with her directives without resort to the contempt power.

18. Importantly, Respondent has indicated that her decision to order Ms. Morrow into custody and her threats and harsh language directed to the boys were undertaken with benevolent motives to "deescalate an unfortunate situation and resolve the visitation issues without further involving the Court." Even so, "bad faith" includes "any knowing misuse of the office, whatever the motive." *In re Nowell*, 293 N.C. at 248. The facts establish that Respondent acted in bad faith because she had "[a] specific intent to use the powers of the judicial office to accomplish a purpose which the judge knew or should have known was beyond the legitimate exercise of [her] authority. [sic] *Id.* Respondent concedes this point as well.

19. Having concluded that Respondent engaged in willful misconduct in office, the Commission also concludes that Respondent's conduct amounts to conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The Supreme Court in *Nowell* explained that "willful misconduct in office of necessity is conduct prejudicial to the administration of justice that brings the judicial office into disrepute." *Nowell*, 293 N.C. at 248.

20. The Supreme Court also defined conduct prejudicial to the administration of justice in *In re Edens*, 290 N.C. 299 (1976) and stated as follows:

> Conduct prejudicial to the administration of justice that brings the judicial office into disrepute has been defined as "conduct which a judge undertakes in good faith but which nevertheless would appear to an objective observer to be not only unjudicial conduct but conduct prejudicial to the public esteem for the judicial office." Whether the conduct of a judge may be so characterized "depends not

> so much upon the judge's motives but more on the conduct itself, the results thereof, and the impact such conduct might reasonably have upon knowledgeable observers."

Id. at 305–306 (internal citations omitted).

21. In the present case, regardless of what Respondent perceived to be good motives for undertaking her course of conduct, Respondent's actions in directing the bailiff to handcuff Ms. Morrow and escort her out of the courtroom without an opportunity to be heard and without any indication of contemptuous behavior by Ms. Morrow in the courtroom, and then continuing to berate and threaten Ms. Morrow's children, is conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

22. As the Supreme Court recognized in *In re Nowell*, "[t]he power of the district court over the lives and everyday affairs of our citizens makes it imperative that the district court judges of the State not only be fully capable but also dedicated to carrying out their official responsibilities in accordance with the law and established standards of judicial conduct." 293 N.C. at 252. In this case, Respondent's conduct fell below the standards expected in Canon 1, Canon 2A, Canon 3A(3) and Canon 3A(4) and the facts establish that she engaged in willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

23. Respondent also acknowledges that the factual stipulations contained herein are sufficient to prove by clear and convincing evidence that her actions constitute willful misconduct in office and that she willfully engaged in misconduct prejudicial to the administration of justice that brings the judicial office into disrepute in violation of N.C. Gen. Stat. § 7A-376.

(Brackets in original and citations to pages of the Stipulation omitted.)

Based on these findings of fact and conclusions of law, the Commission recommended that this Court censure respondent. The Commission based this recommendation on its earlier findings and conclusions, as well as the following additional dispositional determinations:

1. The Supreme Court in *In re Crutchfield*, 289 N.C. 597 (1975) first addressed sanctions under the Judicial Standards Act and stated that the purpose of judicial discipline proceedings "is not primarily to punish any individual but to maintain due and proper administration of justice in our State's courts, public confidence in its judicial system, and the honor and integrity of its judges." *Id.* at 602.

2. In cases where willful misconduct in office is found, however, the Supreme Court has found that censure is an appropriate sanction. As stated in *In re Martin*, 333 N.C. 242 (1993), "Judges especially must be vigilant to act within the bounds of their judicial power. When judges knowingly act beyond these bounds, it amounts to willful misconduct which brings the judicial office into disrepute and prejudices the administration of justice. In such cases censure at least is proper." *Id.* at 245.

3. The Commission recommends censure rather than a more severe sanction based on the following mitigating factors:

a. Respondent has been cooperative with the Commission's investigation, voluntarily providing information about the incident and accepting responsibility for her actions.

b. Respondent has been active in her community and throughout Guilford County and has served as a duly elected judge since 2008.

c. Respondent, through a written statement offered to the hearing panel expressed regret that her actions were inappropriate and offered an apology to the Livesay/Morrow family for the manner in which she handled the matter.

d. The factual stipulations as to the merits make clear that Respondent had engaged in similar conduct in the past, and therefore the Commission gives no weight to the proposed mitigating factor that the incident involving Ms. Morrow was an isolated event.

4. The Commission and Respondent acknowledge the ultimate jurisdiction for the discipline of judges is

> vested in the North Carolina Supreme Court pursuant to Chapter 7A, Article 30 of the North Carolina General Statutes, which may either accept, reject, or modify any disciplinary recommendation from the Commission.
>
> 5. Pursuant to N.C. Gen. Stat. § 7A-377(a5), which requires that at least five members of the Commission concur in a recommendation of public discipline to the Supreme Court, all seven Commission members present at the hearing of this matter concur in this recommendation to **censure Respondent**.

(Emphasis in original and citations to pages of the Stipulation omitted.)

"The Supreme Court 'acts as a court of original jurisdiction, rather than in its typical capacity as an appellate court' when reviewing a recommendation from the Commission." *In re Hartsfield*, 365 N.C. 418, 428, 722 S.E.2d 496, 503 (2012) (order) (quoting *In re Badgett*, 362 N.C. 202, 207, 657 S.E.2d 346, 349 (2008) (order)). Neither the Commission's findings of fact nor its conclusions of law are binding, but they may be adopted by this Court. *Id.* at 428, 722 S.E.2d at 503 (citing *In re Badgett*, 362 N.C. at 206, 657 S.E.2d at 349). If the Commission's findings are adequately supported by clear and convincing evidence, the Court must determine whether those findings support the Commission's conclusions of law. *Id.* at 429, 722 S.E.2d at 503 (citing *In re Badgett*, 362 N.C. at 207, 657 S.E.2d at 349).

The Commission found the stipulated facts to be supported by "clear, cogent and convincing evidence." In executing the Stipulation, respondent agreed that those facts and information would serve as the evidentiary and factual basis for the Commission's recommendation, and respondent does not contest the findings or conclusions made by the Commission. We agree that the Commission's findings are supported by clear, cogent, and convincing evidence, and we now adopt them as our own. Furthermore, we agree with the Commission's conclusions that respondent's conduct violates Canons 1, 2A, 3A(3), and 3A(4) of the North Carolina Code of Judicial Conduct and is prejudicial to the administration of justice, thus bringing the judicial office into disrepute in violation of N.C.G.S. § 7A-376.

This Court is not bound by the recommendations of the Commission. *In re Hartsfield*, 365 N.C. at 428–29, 722 S.E.2d at 503. Rather, we may exercise our own judgment in arriving at a disciplinary decision in light of respondent's violations of several canons of the North Carolina Code of Judicial Conduct. *Id.* at 429, 722 S.E.2d at 503. Accordingly, "[w]e

may adopt the Commission's recommendation, or we may impose a lesser or more severe sanction." *Id.* (citation omitted). The Commission recommended that respondent be censured. Respondent does not contest the Commission's findings of fact or conclusions of law and voluntarily entered into the Stipulation with the understanding that the Commission's recommendation would be to censure respondent.

We appreciate respondent's cooperation and candor with the Commission throughout these proceedings. Weighing the severity of respondent's misconduct against her candor and cooperation, we conclude that the Commission's recommended censure is appropriate.

Therefore, the Supreme Court of North Carolina orders that respondent Angela C. Foster be CENSURED for conduct in violation of Canons 1, 2A, 3A(3), and 3A(4) of the North Carolina Code of Judicial Conduct, and for conduct prejudicial to the administration of justice that brings the judicial office into disrepute in violation of N.C.G.S. § 7A-376.

By order of the Court in Conference, this the 27th day of September, 2019.

s/Davis, J.
For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 27th day of September, 2019.

AMY L. FUNDERBURK
Clerk of the Supreme Court

s/M.C. Hackney
Assistant Clerk

STATE OF NORTH CAROLINA
v.
BOBBY DEWAYNE HELMS

No. 397A18

Filed 27 September 2019

Sentencing—aggravating factor—taking advantage of position of trust and confidence—insufficient evidence

There was insufficient evidence to support the aggravating factor of taking advantage of a position of trust or confidence when sentencing defendant for engaging in a sex offense with a three-year-old child. Defendant was engaged in a relationship with the victim's mother; there was no relationship between defendant and the victim. Although the State relied on an acting in concert theory based on the victim's relationship of trust or confidence with her mother, the jury was not instructed on the theory.

Justice NEWBY dissenting.

Appeal pursuant to N.C.G.S. § 7A-30(2) from the unpublished decision of a divided panel of the Court of Appeals, No. COA18-12, 2018 WL 4701732 (N.C. Ct. App. Oct. 2, 2018), finding no error in judgments entered on 4 May 2017 by Judge Christopher W. Bragg in Superior Court, Union County. Heard in the Supreme Court on 28 August 2019.

Joshua H. Stein, *Attorney General*, *by Alexandra Gruber*, *Assistant Attorney General*, *for the State.*

Ann B. Petersen for defendant-appellant.

HUDSON, Justice.

The case comes to us based on a dissenting opinion in the Court of Appeals. The issue before the Court is whether the Court of Appeals majority erred when it determined that the State presented sufficient evidence of the N.C.G.S. § 15A-1340.16(d)(15) aggravating factor—that defendant "took advantage of a position of trust or confidence, including a domestic relationship, to commit the offense[s]"—to submit that aggravating factor to the jury. Because we conclude there was not sufficient evidence to submit the aggravating factor to the jury, we reverse the decision of the Court of Appeals and remand this matter

for a new sentencing hearing without the consideration of the section 15A-1340.16(d)(15) aggravating factor.

Factual and Procedural Background

On 6 July 2015, Defendant was indicted for two counts of engaging in a sex offense with a child under the age of thirteen years, in violation of section 14-27.4(a)(1) of the General Statutes. Those indictments were later joined for trial with two additional indictments for taking indecent liberties with a child.

The victim, L.F.,[1] was born on 23 April 2011. Her mother, B.F., went on her first date with defendant in 2012. Over the course of B.F.'s relationship with defendant, L.F. had very little contact with defendant and was in his presence only twice: once on B.F.'s first date with defendant, and once on the occasion of the offense.

B.F. brought L.F., who was an infant at the time, along on her first date with defendant. At the end of the date, B.F. performed oral sex on defendant in the car while L.F. was asleep in a rear-facing car seat in the backseat.

The only other time L.F. and defendant were together was on the occasion of the offense. One night in the fall of 2014, B.F. brought three-year-old L.F. to defendant's parents' house. Defendant's parents had a treehouse with a bed and a television inside. B.F., L.F., and defendant sat on the bed in the treehouse and watched a children's television show. Defendant texted B.F. and told her to take off L.F.'s clothes and her own, and she complied. Defendant then removed all of his own clothes, except his boxers. Defendant asked B.F. to touch L.F.'s clitoris, which she did. Defendant watched and began masturbating. At defendant's request, B.F. moved L.F. closer to him. Defendant placed his hand on L.F.'s head to guide her mouth onto his penis. When L.F. expressed that she wanted to leave, defendant took her and B.F. home.

In January 2015, L.F. told her stepmother about what happened in the treehouse. Her stepmother contacted law enforcement and social services.

At trial, the jury found defendant guilty of all four charges and found that the State had proven two aggravating factors: (1) that defendant took advantage of a position of trust or confidence, including a domestic relationship, to commit the offense, and (2) that the victim was very

1. Initials are used throughout this opinion to protect the identity of the juvenile.

young. The trial court arrested judgment on the two convictions of taking indecent liberties with a child.

At the sentencing hearing, the trial court found four mitigating factors, but determined that the aggravating factors outweighed the mitigating factors, and gave defendant an aggravated sentence. The trial court sentenced defendant to 300 to 420 months imprisonment for each charge, to run consecutively, for a total term of 600 to 840 months.

Defendant appealed to the Court of Appeals arguing there was insufficient evidence to support the submission of the second aggravating factor—that defendant "took advantage of a position of trust or confidence, including a domestic relationship, to commit the offense[s,]"—to the jury. § 15A-1340.16(d)(15). In an unpublished opinion, *State v. Helms*, No. COA18-12, 2018 WL 4701732 (N.C. Ct. App. Oct. 2, 2018), the Court of Appeals determined that evidence did support the aggravating factor, in that defendant used his relationship with B.F. to create a relationship with L.F. and to bring L.F. to his parents' home in order to commit the offense. The Court of Appeals therefore determined that there was "a permissible inference that because of L.F.'s extreme reliance on her mother, L.F. would trust and rely on her mother's boyfriend of more than two years, even though L.F. only interacted with defendant in person on two occasions." *Id.*, slip op. at 7–8, 2018 WL 4701732, at *3. As a result, the Court of Appeals concluded that the trial court did not err when it submitted the trust or confidence aggravating factor to the jury. *Id.*, slip op. at 9, 2018 WL 4701732, at *4.

Writing separately, the dissenting judge disagreed with the majority that there was sufficient evidence to submit the aggravating factor to the jury. *Helms*, slip op. at 1, 2018 WL 4701732, at *5 (Hunter, J., dissenting). He would have held that, although the State showed evidence of a relationship of trust or confidence between L.F. and B.F., it failed to present evidence of a relationship of trust or confidence between L.F. and defendant, and that imputing the closeness of defendant's relationship with B.F. to defendant's relationship with L.F. was "tenuous[.]" *Id.*, slip op. at 1, 2018 WL 4701732, at *4 (Hunter, J., dissenting).

Defendant filed his appeal of right based on the dissenting opinion.

Analysis

"The State bears the burden of proving beyond a reasonable doubt that an aggravating factor exists . . . ." N.C.G.S. § 15A-1340.16(a). A court may impose an aggravated sentence during the sentencing phase of a trial if a jury finds that a "defendant took advantage of a position of trust

or confidence, including a domestic relationship, to commit the offense." § 15A-1340.16(d)(15). A finding of this aggravating factor depends on "the existence of a relationship between the defendant and victim generally conducive to reliance of one upon the other." *State v. Daniel*, 319 N.C. 308, 311, 354 S.E.2d 216, 218 (1987).

We have upheld a finding of the "trust or confidence" factor in very limited factual circumstances. *See State v. Mann*, 355 N.C. 294, 319, 560 S.E.2d 776, 791 (2002) (citations omitted). Specifically, we have upheld this aggravating factor where the relationship has been between the defendant and the victim. *See*, *e.g.*, *State v. Farlow*, 336 N.C. 534, 542, 444 S.E.2d 913, 918 (1994) ("The existence of this aggravating factor is premised on a relationship of trust between defendant and the victim which causes the victim to rely upon defendant."); The Court of Appeals has also applied this interpretation of the statute. *See*, *e.g.*, *State v. Stanley*, 74 N.C. App. 178, 327 S.E.2d 902 (factor properly found where *victim* trusted and obeyed *defendant* as an authority figure), *disc. rev. denied*, 314 N.C. 546, 335 S.E.2d 318 (1985); *State v. Baucom*, 66 N.C. App. 298, 311 S.E.2d 73 (1984) (factor properly found where *victim* was ten-year-old brother of *defendant*); *State v. Potts*, 65 N.C. App. 101, 308 S.E.2d 754 (1983) (factor properly found where *victim* thought of *defendant* as a brother), *disc. rev. denied*, 311 N.C. 406, 319 S.E.2d 278 (1984).

Here, we conclude that the State's evidence at trial was insufficient to establish the trust or confidence aggravating factor because it failed to show that the relationship between L.F. and defendant was conducive to her reliance on him. Rather, the State's evidence showed only that L.F. trusted defendant in the same way she might trust any adult acquaintance, a fact which our courts have found to be insufficient to support this aggravating factor. *See State v. Blakeman*, 202 N.C. App. 259, 271, 688 S.E.2d 525, 532 (2010) (finding evidence that the victim trusted the defendant in the same way she would trust any adult parent of a friend insufficient to support the aggravating factor).

L.F. was never in defendant's care, nor did she ever spend the night in the same location as defendant. Indeed, she was not alone with him even when the offense occurred. Her only contact with defendant was as an infant on her mother's first date with defendant and as a three-year-old accompanying her mother to defendant's parents' house on the occasion of the offense. The State's evidence showed nothing more that could lead to the inference that L.F. had a relationship with defendant in which she trusted or relied on him at all.

The State contends that it is not the relationship between defendant and L.F. that is relevant here; rather, it is L.F.'s relationship with B.F. Employing an "acting in concert" theory, the State argues that defendant took advantage of L.F.'s relationship of trust or confidence with her mother to carry out the offense. The State suggests the jury relied on this theory because counsel for both defendant and the State focused on defendant's relationship with B.F. in closing arguments. However, defense counsel did not specifically argue the "acting in concert" theory before closing, and the jury was not instructed on the theory. Due process requires the sufficiency of the evidence be reviewed with respect to the theory upon which the jury was instructed. *State v. Wilson*, 345 N.C. 119, 123, 478 S.E.2d 507, 510 (1996) (citing *Presnell v. Georgia*, 439 U.S. 14, 16 (1978)). We decline now to justify the jury's decision based on a theory that was never presented to it.

Without the "acting in concert" theory, the evidence here falls short of showing a relationship between defendant and L.F. whereby he took advantage of a relationship of trust or confidence to carry out the offense. Therefore, we reverse the decision of the Court of Appeals and remand to that court for further remand to the trial court to resentence defendant without consideration of the section 15A-1340.16(d)(15) aggravating factor.

REVERSED AND REMANDED.

Justice NEWBY dissenting.

The issue in this case is whether there was sufficient evidence to ask the jury to decide whether defendant abused a position of trust or confidence to commit the sexual assault. To resolve that issue, we must first answer a question of pure statutory interpretation: does the trust or confidence provision require that defendant unilaterally built a relationship with the victim toddler? It does not; I respectfully dissent.

Under section 15A-1340.16(d)(15), a jury may find that a defendant committed an aggravated offense if to commit the offense "[t]he defendant took advantage of a position of trust or confidence, including a domestic relationship." N.C.G.S. § 15A-1340.16(d)(15) (2017). The majority rewrites the statute to also require that the relationship of trust or confidence specifically exist between the defendant and the victim. The General Assembly could have easily placed that requirement in the statute if that is what it intended, but it did not. The statute should be read as written. The express language requires only that a relationship

of trust or confidence existed and that the defendant took advantage of it to commit the underlying crime. It does not say anything about necessary parties to the relationship.

Here the child victim had a relationship of trust and confidence with her mother. Defendant also had a relationship of trust or confidence with the victim's mother: for a couple years they spoke often through Facebook Messenger, made plans for the future, and even called each other "husband" and "wife."

Defendant actively leveraged both relationships to sexually assault the child. Over the span of the relationship, defendant cultivated the child's mother so she would comply with his wishes. He took advantage of her diminished mental capacity, breaching barriers a mother might otherwise put up to protect her child. Defendant encouraged the mother to sexually stimulate the child. Several times he spoke to the mother of his plans to commit sexual acts with their future offspring, and he asked for photos of the child. In time, he used the mother's trust to bring both mother and child to his parents' private treehouse where he completed his plan.

If not for the relationships of trust or confidence, the mother would not have allowed defendant access to her child. If not for the relationships, the mother and child would never have gone to the treehouse with defendant. And if not for the relationships, defendant would not have secured the mother's assistance to commit the sexual assault for which he was convicted.

The trial court's instruction to the jury was also proper. It was quite literally "by the book." The court asked the jury to answer "yes" or "no" to the following question: "Do you find the evidence beyond a reasonable doubt [that] . . . [t]he defendant took advantage of a position of trust or confidence, including a domestic relationship, to commit the offense[?]" This question exactly matches the statutory provision for this aggravating factor, as well as the model jury instruction. *See* N.C.P.I. Crim. 204.25(18) (June 2018). Not surprisingly, defendant did not contest this instruction.

The jury was able to simply answer "yes." It did not read in extra requirements for the aggravating factor like the majority does. A relationship of trust or confidence existed. But for that relationship, the sexual assault would not have happened. And defendant actively manipulated that relationship for that very purpose.

The majority quotes our decision in *State v. Daniel*, 319 N.C. 308, 354 S.E.2d 216 (1987), to support its holding that there can be no

relationship of trust or confidence unless the victim and the defendant have interacted substantially before the offense. In that case, we said that finding this aggravating factor "depends . . . upon the existence of a relationship between the defendant and victim generally conducive to reliance of one upon the other." *Id.* at 311, 354 S.E.2d at 218. For the majority, no such relationship was formed because the record shows only two occasions when the victim and defendant interacted.

The majority misapplies *Daniel*. The quote relied on by the majority only served to distinguish between this aggravating factor and another, the victim's youth. That same paragraph explains this purpose. The defendant in that case argued that the youth factor and the relationship of trust or confidence factor could not both be applied because they were based on the same evidence. In response, we explained:

> . . . the aggravating factor that the defendant took advantage of a position of trust or confidence was grounded not in the youth of her child but more fundamentally in the child's dependence upon her. A finding of this aggravating factor depends no more on the youth of the victim than it does on the notion that confidence or trust in the defendant must repose consciously in the victim. Such a finding depends instead on the existence of a relationship between defendant and victim generally conducive to reliance of one upon the other.

Id. So, the quote on which the majority builds its opinion does not give a complete picture of this aggravating factor. It is merely an explanation of why that factor, under the facts in that case, did not rest on the exact same evidence as the "victim's youth" factor. *Daniel* dealt with the relationship of a defendant mother and victim child, obviously one of trust or confidence. The issue was not whether there was evidence of such a relationship, but only whether that factor was truly different than the youth factor. *Daniel* simply does not speak to situations like this one, where the question is whether a relationship of trust or confidence existed between the *right* parties.

The majority cites one other case from this Court to bolster its new requirement that the relationship of trust or confidence exist between the defendant and the victim, but that case also fails to support its holding. In *State v. Farlow*, 336 N.C. 534, 542, 444 S.E.2d 913, 918 (1994), we cited *Daniel* saying "[t]he existence of this aggravating factor is premised on a relationship of trust between defendant and the victim which causes the victim to rely upon the defendant." But again, the majority

ignores the specific facts of the case. In *Farlow*, there was no other significant relationship besides the one between the defendant and the victim. The victim's father was deceased, his mother was away, and his caretaker grandfather was deceased. *Id.* The defendant built a relationship with the victim solely and directly because it could not have been any other way. This Court has not addressed a case with facts like this one, where the relationship of trust or confidence that brought about the sexual assault was not between the defendant and the victim directly.

The majority also argues this aggravating factor could be attributed to defendant only under an "acting in concert" theory, and so must have been instructed to the jury under that theory. That is incorrect. "Acting in concert" is not an abstract legal theory, but a common sense principle that places responsibility on defendants who would not otherwise directly satisfy the statutory provision, when they scheme with someone who does. It supplements aggravating factors that by their terms could only be completed directly and individually.

But an "acting in concert" theory need not be explicitly instructed when the statute providing the aggravating factor is broad enough to apply without it. *State v. Benbow*, 309 N.C. 538, 308 S.E.2d 647 (1983), provides an example. There the defendant committed second-degree murder and armed robbery. His sentence was aggravated because, among other things, the death of the robbery victim was "especially heinous, atrocious, or cruel." *See* N.C.G.S. § 15A-1340.16(d)(7) (2017) (allowing for an aggravated sentence when "[t]he offense was especially heinous, atrocious, or cruel"). The Court upheld the finding of that factor, even though the defendant himself did not directly participate in killing the victim, but instead was a lookout. *Benbow*, 309 N.C. at 544–46, 308 S.E.2d at 651–52. The Court did not discuss an acting in concert theory at all. Only two questions applied: (1) did the defendant commit the underlying offense? and (2) was the offense especially heinous, atrocious, or cruel? The answer to both was yes, so no "acting in concert" theory was necessary. *See generally id.* at 544–45, 308 S.E.2d at 651.

Because section 15A-1340.16(d)(15) does not by its terms require a specific type of relationship between the child victim and defendant, only two questions apply: (1) did defendant commit the underlying offense? and (2) did he take advantage of a relationship of trust or confidence to do so? The answer to both is yes.

I respectfully dissent.

STATE OF NORTH CAROLINA
v.
MICHAEL PATRICK RYAN

No. 366A10

Filed 27 September 2019

Appeal pursuant to an order of this Court allowing review of an order granting defendant's motion for appropriate relief entered on 7 February 2017 by Judge W. Erwin Spainhour in Superior Court, Gaston County. Heard in the Supreme Court on 27 August 2019.

Joshua H. Stein, Attorney General, by Mary Carla Babb, Assistant Attorney General, for the State.

William F. W. Massengale and Marilyn G. Ozer, for defendant-appellee.

PER CURIAM.

Justice ERVIN took no part in the consideration or decision of this case. The remaining members of the Court are equally divided, with three members voting to affirm and three members voting to reverse the decision of the Superior Court, Gaston County. Accordingly, the decision of the Superior Court, Gaston County is left undisturbed and stands without precedential value. *See State v. Woodruff*, 307 N.C. 264, 297 S.E.2d 382 (1982).

AFFIRMED.

STATE v. CLEGG

[373 N.C. 50 (2019)]

STATE OF NORTH CAROLINA	)	
	)	
v.	)	Wake County
	)	
CHRISTOPHER A. CLEGG	)	

No. 101P15-3

ORDER

Defendant's motion for leave to file a supplemental petition for discretionary review is decided as follows: Defendant's petition is allowed. The State shall have up to and including thirty days from the date of this order within which to file its response to defendant's supplemental petition for discretionary review.

By order of the Court in conference, this the 25th day of September, 2019.

s/Davis, J.
For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 27th day of September, 2019.

AMY FUNDERBURK
Clerk, Supreme Court of
North Carolina

s/M.C. Hackney
Assistant Clerk, Supreme Court of
North Carolina

STATE v. COURTNEY

[373 N.C. 51 (2019)]

STATE OF NORTH CAROLINA	)	
	)	
v.	)	WAKE COUNTY
	)	
JAMES HAROLD COURTNEY, III	)	

No. 160PA18

ORDER

The Court hereby allows a limited temporary stay of enforcement of its mandate in this case until such time as the United States Supreme Court rules on a motion for a stay, provided the State files such motion with that Court within seven days of the date of this Order. The State's application to stay enforcement of the mandate is otherwise denied.

By order of this Court in Conference, this 5th day of September, 2019.

s/Davis, J.
For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 5th day of September, 2019.

AMY L. FUNDERBURK
Clerk of the Supreme Court

s/M.C. Hackney
Assistant Clerk

STATE OF NORTH CAROLINA	)	
	)	
v.	)	Granville County
	)	
VINCENT LAMONT HARRIS	)	

No. 548A04-2

ORDER

The State's petition for discretionary review is decided as follows: The Court elects to treat the State's petition for discretionary review as a petition for certiorari and allows the State's petition for the limited purpose of remanding this case to the Court of Appeals for further consideration in light of this Court's decision in *State v. Grady* (No. 179A14-3) (16 August 2019), including determining what, if any, additional proceedings should be utilized in order to properly decide the questions that will be before it on remand.

By order of the Court in conference, this the 25th day of September, 2019.

s/Davis, J.
For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 27th day of September, 2019.

AMY FUNDERBURK
Clerk, Supreme Court of
North Carolina

s/M.C. Hackney
Assistant Clerk, Supreme Court of
North Carolina

STATE v. SHERRILL

[373 N.C. 53 (2019)]

STATE OF NORTH CAROLINA	)	
	)	
v.	)	Mecklenburg County
	)	
MICHAEL WAYNE SHERRILL	)	

No. 246A09-2

ORDER

Defendant's motion for appropriate relief is decided as follows: Pursuant to N.C.G.S. § 15A-1415(b), the Court determines that it is necessary to remand this case to the Superior Court, Mecklenburg County for the holding of a hearing, the taking of evidence, and the entry of an order addressing defendant's motion for appropriate relief. The time periods for perfecting and proceeding with defendant's appeal are tolled pending the completion of the required trial court proceedings in accordance with N.C.G.S. § 15A-1418(c). The Superior Court, Mecklenburg County shall, upon the entry of its order, transmit that order to this Court as required by N.C.G.S. § 15A-1418(a) so that it may either proceed with the appeal or enter an appropriate order terminating it.

By order of the Court in conference, this the 25th day of September, 2019.

s/Davis, J.
For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 27th day of September, 2019.

AMY FUNDERBURK
Clerk, Supreme Court of
North Carolina

s/M.C. Hackney
Assistant Clerk, Supreme Court of
North Carolina

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

27 SEPTEMBER 2019

1A96-3	State v. Walter R. Goldston	Def's Pro Se Motion to Invoke Court's Jurisdiction	Dismissed
23P19	Brinkley Properties of Kings Mountain, LLC, Jerry Moore, Carolyn Moore, Don Baber, Gail Baber, Barry Rikard, Jenny Rikard, Stephanie Short, Shane Short, Alice White, Mabel Moore, Mike Whitehead, Elizabeth Whitehead, Leonard White, George Greer, and Mary Greer v. City of Kings Mountain, North Carolina, Orchard Trace of Kings Mountain, LLC	Plt's PDR Under N.C.G.S. § 7A-31 (COA18-615)	Denied
41P17-6	Arthur O. Armstrong v. Wilson County, et al.	Plt's Pro Se Petition for Writ of Certiorari to Review Order of Superior Court, Wilson County	Denied
50P19-2	Jonathan E. Brunson v. Office of the District Attorney for the 12th Prosecutorial District, the North Carolina Department of Social Services, and the State of North Carolina	Plt's Pro Se Motion for Petition for Rehearing of PDR (COA18-658)	Dismissed
57P19-2	Jonathan E. Brunson v. North Carolina Department of Justice, North Carolina Department of Public Safety, and the State of North Carolina	Plt's Pro Se Motion for Petition for Rehearing of PDR (COA18-837)	Dismissed
61P19-2	Jonathan E. Brunson v. North Carolina Department of Justice and the State of North Carolina	Plt's Pro Se Motion for Petition for Rehearing of PDR (COA18-656)	Dismissed

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

27 SEPTEMBER 2019

74P19	State v. Justin Alexander Vandergriff	1. Def's Petition for Writ of Certiorari to Review Order of the COA (COAP19-123)	1. Dismissed
		2. Def's Motion to Consolidate Matters	2. Dismissed as moot
		3. Def's Petition for Writ of Certiorari to Review Order of the COA	3. Dismissed
		4. Def's Motion for Leave of Court to Consider Defendant's Reply	4. Denied
91P14-6	State v. Salim Abdu Gould	1. Def's Pro Se Notice of Appeal Based Upon A Constitutional Question (COA18-425)	1.
		2. Def's Pro Se Motion to Proceed *In Forma Pauperis*	2.
		3. Def's Pro Se Motion for Notice of Appeal	3.
		4. Def's Pro Se Motion for Writ of Habeas Corpus Arbitration-Mediation	4. Denied **07/24/2019**
		5. Def's Pro Se Petition for Writ of Mandamus	5. Denied **09/23/2019**
		6. Def's Pro Se Motion for Jurisdictional Hearing and to Issue Transport Order	6. Denied **09/23/2019**
		7. Def's Pro Se Motion for Averment of Jurisdiction - Quo Warranto	7.
		8. Def's Pro Se Motion for Subpoena *Duces Tecum*	8. **Davis, J., recused**
97P19	State v. Justin Alexander Vandergriff	1. Def's Petition for Writ of Certiorari to Review Order of the COA (COAP19-112)	1. Dismissed
		2. Def's Petition for Writ of Certiorari to Review Orders of District and Superior Court, Wake County	2. Dismissed
		3. Def's Motion for Leave of Court to Consider Defendant's Reply	3. Denied
101P15-3	State v. Christopher Anthony Clegg	1. Def's Notice of Appeal Based Upon A Constitutional Question (COA17-76)	1. --- **08/14/2018**
		2. Def's PDR Under N.C.G.S. § 7A-31	2. Special Order **08/14/2018**
		3. State's Motion to dismiss appeal	3. Allowed **08/14/2018**
		4. Def's Motion for Leave to File Supplemental PDR	4. Special Order **09/25/2019**

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

27 SEPTEMBER 2019

123P19	State v. Raymond Carl Gilbert	Def's PDR Under N.C.G.S. § 7A-31 (COA18-614)	Denied
128P19	State v. Justin Alexander Vandergriff	Def's Petition for Writ of Certiorari to Review Order of the COA (COAP19-121)	Dismissed
130P19	State v. Terrence Andrew Thomas	Def's Pro Se PDR Under N.C.G.S. § 7A-31 (COA18-959)	Denied **Davis, J., recused**
131P16-13	Somchai Noonsab v. Amy L. Funderburk	Def's Pro Se Motion to Vacate (COAP16-103)	Dismissed
138P19	Vincent Bordini v. Donald J. Trump for President, Inc., and Earl Phillip	Plt's Petition for Writ of Certiorari to Review Decision of the COA (COA18-409)	Denied **Ervin, J., recused**
149P19	State v. James Brandon Smith	Def's PDR Under N.C.G.S. § 7A-31 (COA18-789)	Denied **Davis, J., recused**
156A17-2	Christopher DiCesare, et al. v. the Charlotte-Mecklenburg Hospital Authority	1. Def's Motion to Admit Richard A. Feinstein, Pro Hoc Vice 2. Def's Motion to Admit Nicholas A. Widnell, Pro Hoc Vice	1. Allowed **09/03/2019** 2. Allowed **09/03/2019**
156P09-3	Waddell Bynum v. Mecklenburg County School Board	Plt's Pro Se Motion for Notice of Appeal	Dismissed
157P19	State v. Virginia Lee Loftis	Def's PDR Under N.C.G.S. § 7A-31 (COA18-709)	Denied **Davis, J., recused**
160PA18	State v. James Harold Courtney, III	State's Motion to Stay Enforcement of the Mandate (COA17-1095)	Special Order **09/05/2019**
162P18-2	State v. Ronnie Lee Ford	1. Def's Pro Se Petition for Writ of Certiorari to Review Order of Superior Court, Guilford County (COA17-817) 2. Def's Pro Se Motion to Proceed *In Forma Pauperis*	1. Dismissed 2. Allowed

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

27 SEPTEMBER 2019

163P19	Marion Edward Pearson, Jr. v. Judicial Standards Commission	1. Petitioner's Pro Se Petition for Writ of Mandamus 2. Petitioner's Pro Se Motion for Revised Complaint of Misconduct	1. Denied 2. Dismissed **Ervin, J., recused** **Davis, J., recused**
168A19	Cardiorentis AG v. Iqvia Ltd. and Iqvia RDS, Inc.	Def's Motion for Leave for Charles Marshall to Withdraw as Counsel of Record	Allowed **09/17/2019**
181A93-4	State v. Rayford Lewis Burke (DEATH)	Motion of ACLU Capital Punishment Project, ACLU of North Carolina Legal Foundation, N.C. Advocates for Justice, and N.C. Conference of the NAACP for Leave to File Brief as Amici Curiae	Allowed **Ervin, J., recused**
193P18-5	State v. Joshua Bolen	1. Def's Pro Se Motion for Appropriate Relief (COAP18-238) 2. Def's Pro Se Petition for Writ of Habeas Corpus	1. 2. Dismissed without prejudice **09/25/2019**
200P19	Pender County and the Town of Atkinson v. Donald Sullivan and Marion P. Sullivan	Defs' Pro Se PDR Under N.C.G.S. § 7A-31 (COA18-774)	Denied
202P18	Jennifer L. Haulcy, Employee v. The Goodyear Tire & Rubber Company, Employer, and Liberty Mutual Insurance Company, Carrier	Plt's PDR Under N.C.G.S. § 7A-31 (COA17-844)	Denied
204P18	Carra Jane Penegar, Widow and Executrix of the Estate of Johnny Ray Penegar, Deceased Employee v. United Parcel Service, Employer, and Liberty Mutual Insurance Co., Carrier	1. Plt's PDR Under N.C.G.S. § 7A-31 (COA17-404) 2. Plt's Motion to Amend the PDR	1. Denied 2. Allowed

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

27 SEPTEMBER 2019

216A19	Milton Draughon, Sr., Plaintiff v. Evening Star Holiness Church of Dunn, Defendant/ Third-Party Plaintiff v. Dafford Funeral Home, Inc., Third-Party Defendant	1. Defendant/Third-Party Plt's Notice of Appeal Based Upon a Dissent (COA18-887) 2. Defendant/Third-Party Plt's PDR as to Additional Issues 3. Defendant/Third-Party Plt's Motion for John W. Graebe to Withdraw as Counsel of Record 4. Defendant/Third-Party Plt's Motion to Substitute Denaa J. Griffin as Counsel of Record	1. --- 2. Allowed 3. Allowed 4. Allowed
222P19	Department of Transportation v. Hutchinsons, LLC	1. Def's Notice of Appeal Based Upon A Constitutional Question (COA18-675) 2. Def's PDR Under N.C.G.S. § 7A-31 3. Plt's Motion to Dismiss Appeal	1. --- 2. Denied 3. Allowed
237P19	State v. William Brandon Mosley	1. Def's Petition for Writ of Certiorari to Review Decision of the COA (COAP18-474) 2. Def's Petition for Writ of Certiorari to Review Order of Superior Court, Rutherford County	1. Dismissed 2. Dismissed **Beasley, C.J., recused** **Ervin, J., recused**
238P19	State v. Matthew Garret McMahan	1. State's Motion for Temporary Stay (COA18-672) 2. State's Petition for Writ of Supersedeas 3. State's PDR Under N.C.G.S. § 7A-31	1. Allowed **06/24/2019** Dissolved **09/25/2019** 2. Denied 3. Denied
241PA19	Anita Kathleen Parkes v. James Howard Hermann	1. Plt's PDR Under N.C.G.S. § 7A-31 (COA18-888) 2. Def's Conditional PDR Under N.C.G.S. § 7A-31	1. Allowed 2. Allowed
245A08-3	State v. Terrence Lowell Hyman	1. Def's PDR Under N.C.G.S. § 7A-31 (COA16-398-2) 2. Def's Petition in the Alternative for Writ of Certiorari to Review Decision of the COA	1. Denied 2. Denied
245P19	Medport, Inc. v. Craig Smith	Plt's PDR Under N.C.G.S. § 7A-31 (COA18-950)	Denied

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

27 SEPTEMBER 2019

246A09-2	State v. Michael Wayne Sherrill	1. Def's Motion for Appropriate Relief 2. State's Motion for Extension of Time to File Response to Motion for Appropriate Relief	1. Special Order 2. Allowed **04/26/2019**
246P19	Margarita Walston, Employee v. Duke University, Self-Insured Employer	Plt's PDR Under N.C.G.S. § 7A-31 (COA18-981)	Denied
261P19	The North Carolina Reinsurance Facility v. Mike Causey, Commissioner of the North Carolina Department of Insurance, and Allstate Indemnity Company	Respondent's (Allstate Indemnity Company) PDR Under N.C.G.S. § 7A-31 (COA18-1303)	Denied
263P17-2	NNN Durham Office Portfolio 1, LLC, et al. v Highwoods Realty Limited Partnership, et al.	1. Plt's PDR Under N.C.G.S. § 7A-31 (COA17-756) 2. Plts' Motion to Withdraw PDR Under N.C.G.S. § 7A-31 as to Appellants NNN Durham Office Portfolio 12, LLC and St. Kitts Investments, LLC	1. Denied 2. Allowed
270P19	State v. Loveless Decarlos Hoskins	Def's PDR Under N.C.G.S. § 7A-31 (COA18-1181)	Denied
274P11-2	Jorge Galeas-Menchu, Jr. v. Dennis M. Daniel, Warden Pasquotank Correctional	Petitioner's Pro Se Petition for Writ of Habeas Corpus (COAP11-423)	Dismissed without prejudice **09/25/2019**
274A19	In the Matter of L.T.	Respondent's Motion for Extension of Time to File Brief	Allowed **08/15/2019**
275P19-2	Elizabeth M.T. O'Nan v. Nationwide Insurance Company, et al.	Plt's Pro Se Motion for Reconsideration (COA18-990)	Dismissed
277P18-5	State v. Gabriel Adrian Ferrari	Def's Pro Se Motion to Strike Supreme Court of North Carolina Order 14 August 2019 as Illegal and Non-Constitutional (COA98-724)	Dismissed
281P18-3	State v. Jason Robert Vickers	Def's Pro Se Motion for PDR Under N.C.G.S. § 7A-31 (COAP17-628; COA17-1216; COA18-35)	Dismissed **Davis, J., recused**

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

27 SEPTEMBER 2019

283P19	State v. Nathan Elisha Tyler, Jr.	Def's PDR Under N.C.G.S. § 7A-31 (COA18-1184)	Denied
285P19	Eric M. McMillian v. Tim Mullally (Wake County Director of Safety and Security) and Doug Goodwin Director, General Security Agency (GSA) of Wake County and Trepass Assessment Review Committee (TARC)	Plt's Pro Se Motion for Civil Claim (COAP19-347)	Dismissed
286P19	Jeffrey Hunt v. N.C. Department of Public Safety	Respondent's PDR Under N.C.G.S. § 7A-31 (COA18-1195)	Denied **Davis, J., recused**
287P19	State v. Henry Arnaldo Padilla-Amaya	1. Def's PDR Under N.C.G.S. § 7A-31 (COA18-856) 2. State's Motion to Deem Response Timely Filed	1. Denied 2. Dismissed as moot
293A19	State v. Adam Richard Carey	1. State's Motion for Temporary Stay (COA18-1233) 2. State's Petition for Writ of Supersedeas 3. State's Notice of Appeal Based upon a Dissent	1. Allowed **08/05/2019** 2. Allowed **08/21/2019** 3. ---
295A19	In the Matter of A.L.S.	Respondent's Motion to Amend the Record on Appeal to Include a Rule 9(d) Exhibit	Allowed **09/06/2019**
296P18	Department of Transportation v. Jay Butmataji, LLC; Byrd, Byrd, Ervin, McMahon & Denton, P.A., Trustee; Mukti, Inc., BB&T Collateral Service Corporation, Trustee, and Branch Banking and Trust Company	1. Def's (Jay Butmataji, LLC) PDR Under N.C.G.S. § 7A-31 (COA17-689) 2. Kevin G. Mahoney's Motion to Withdraw as Counsel	1. Denied 2. Allowed

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

27 SEPTEMBER 2019

297P19	Tonya A. Spahr v. Timothy D. Spahr v. Carol Pearce, Intervenor	1. Def's Pro Se Petition for Writ of Certiorari to Review Order of the COA (COAP19-316) 2. Def's Pro Se Petition for Writ of Mandamus 3. Def's Pro Se Petition for Writ of Prohibition 4. Def's Pro Se Motion to Vacate Order	1. Denied 2. Denied 3. Denied 4. Denied
305P19	State v. Walter Paul Thomas	Def's Pro Se Motion for PDR (COA05-480)	Denied
306P19	Janet H. Solesbee and husband, Carl Solesbee v. Cheryl H. Brown and husband, Roger Brown; Gwenda H. Angel and husband, Wesley Angel; and Lisa H. Debruhl and husband, J. Delaine Debruhl	Respondents' (Lisa H. Debruhl and J. Delaine Debruhl) PDR Under N.C.G.S. § 7A-31 (COA18-842)	Denied
309A19	In re J.L.	1. Respondent's Motion to Stay Proceedings 2. Respondent's Amended Motion to Stay Proceedings	1. Dismissed as moot **08/29/2019** 2. Special Order **08/29/2019**
315P19	State v. Tony Maurice Gorham	1. Def's Pro Se Petition for Writ of Certiorari to Review Order of Superior Court, Halifax County (COAP18-578) 2. Def's Pro Se Motion for Appropriate Relief	1. Dismissed 2. Dismissed without prejudice
317P19	In the Matter of Phillip Entzminger, Assistant District Attorney, Prosecutorial District 3A	1. Respondent's Motion for Temporary Stay (COA18-1224) 2. Respondent's Petition for Writ of Supersedeas 3. Respondent's Petition for Discretionary Review Under N.C.G.S. § 7A-31	1. Allowed **08/15/2019** 2. 3.

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

27 SEPTEMBER 2019

321P19	Gary Dellinger, Virginia Dellinger, and Timothy S. Dellinger v. Lincoln County, Lincoln County Board of Commissioners, and Strata Solar, LLC and Mark Morgan, Bridgette Morgan, Timothy Mooney, Nadine Mooney, Andrew Schott, Wendy Schott, Robert Bonner, Michelle Bonner, Jeffrey Deluca, Lisa Deluca, Martha Mclean, Charleen Montgomery, Robert Montgomery, David Ward, Intervenors	1. Intervenors' Motion for Temporary Stay (COA18-1080) 2. Intervenors' Petition for Writ of Supersedeas	1. Allowed **08/16/2019** 2.
324A19	State v. Jack Howard Hollars	1. State's Motion for Temporary Stay (COA18-932) 2. State's Petition for Writ of Supersedeas 3. Plt's Notice of Appeal Based upon a Dissent 4. Plt's Petition for Discretionary Review As To Additional Issues 5. Def's Motion for extension of time to file response	1. Allowed **08/21/2019** 2. 3. 4. 5. Allowed **09/19/2019** **Davis, J., recused**
326P18	Raymond A. Da Silva, Executor of the Estate of Dolores J. Pierce v. Wakemed, Wakemed d/b/a Wakemed Cary Hospital, and Wakemed Faculty Practice Plan	Defs' PDR Under N.C.G.S. § 7A-31 (COA17-820; 17-820-2)	Allowed

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

27 SEPTEMBER 2019

328P19	Cathy Anne Carswell Reis, et al. v. Barbara Anthony Carswell, et al.	1. Plt's Pro Se Petition for Discretionary Review (COA18-1039)	1.
		2. Plt's Pro Se Motion to Withdraw Opinion	2.
		3. Plt's Pro Se Motion for Temporary Stay	3. Denied **08/29/2019**
		4. Plt's Pro Se Petition for Writ of Supersedeas	4.
		5. Plt's Pro Se Notice of Appeal Based Upon A Constitutional Question	5.
330A19	State v. Jesse James Tucker	1. State's Motion for Temporary Stay (COA18-1295)	1. Allowed **08/22/2019**
		2. State's Petition for Writ of Supersedeas	2. Allowed **09/09/2019**
		3. State's Notice of Appeal Based upon a Dissent	3. ---
332P19	State v. Dalton Dewayne Flowers	1. Def's Motion for Temporary Stay (COA18-832)	1. Allowed **08/23/2019**
		2. Def's Petition for Writ of Supersedeas	2.
333P18-3	State v. Douglas Wayne Stanaland	1. Def's Pro Se Petition for Writ of Habeas Corpus	1. Denied **09/04/2019**
		2. Def's Pro Se Motion for Judicial Review/Writ of Certiorari/Motion to Appeal	2. Dismissed **09/04/2019**
333P19-1	Sunaina S. Glaize v. Samuel G. Glaize	1. Plt's Pro Se Petition for Writ of Certiorari to Review Order of the COA (COA19-612)	1. Denied **08/29/2019**
		2. Plt's Pro Se Petition for Writ of Mandamus	2. Denied **08/29/2019**
		3. Plt's Pro Se Petition for Writ of Supersedeas	3. Denied **08/29/2019**
		4. Plt's Pro Se Petition for Writ of Prohibition	4. Denied **08/29/2019**
		5. Plt's Pro Se Motion to Disqualify Clerk, Daniel M. Horne	5. Denied **08/29/2019**
334P19	State v. Tenedrick Strudwick	1. State's Motion for Temporary Stay (COA18-794)	1. Allowed **08/26/2019**
		2. State's Petition for Writ of Supersedeas	2.

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

27 SEPTEMBER 2019

340A19	State v. Shawn Patrick Ellis	1. Def's Motion for Temporary Stay (COA18-817) 2. Def's Petition for Writ of Supersedeas 3. Def's Notice of Appeal Based upon a Dissent	1. Allowed **08/29/2019** 2. Allowed **09/25/2019** 3. ---
342P19	Jabari Holmes, Fred Culp, Daniel E. Smith, Brendon Jaden Peay, Shakoya Carrie Brown, and Paul Kearney, Sr. v. Timothy K. Moore, in His Official Capacity as Speaker of the North Carolina House of Representatives; Philip E. Berger, in His Official Capacity as President Pro Tempore of the North Carolina Senate; David R. Lewis, in His Official Capacity as Chairman of the House Select Committee on Elections for the 2018 Third Extra Session; Ralph E. Hise, in His Official Capacity as Chairman of the Senate Select Committee on Elections for the 2018 Third Extra Session; the State of North Carolina; and the North Carolina State Board of Elections	Plt's Petition for Discretionary Review (Prior to Determination) (COA19-762)	Denied **09/25/2019**
343A19	In the Matter of J.D.	1. State's Motion for Temporary Stay (COA18-1036) 2. State's Petition for Writ of Supersedeas 3. Plt's Notice of Appeal Based upon a Dissent 4. Plt's Petition for Discretionary Review As To Additional Issues	1. Allowed **09/05/2019** 2. Allowed **09/25/2019** 3. --- 4.

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

27 SEPTEMBER 2019

344P19	State v. Jacquel Levell Holliday	1. Def's Motion for Temporary Stay (COA18-1144) 2. Def's Petition for Writ of Supersedeas	1. Allowed **09/04/2019** 2.
351P19	State v. Danny Corey Williams	Petitioner's Pro Se Petition for Writ of Habeas Corpus	Denied **09/05/2019**
352P19	State v. Kenneth Russell Anthony	1. State's Motion for Temporary Stay (COA18-1118) 2. State's Petition for Writ of Supersedeas	1. Allowed **09/05/2019** 2.
355P19	State v. Kenneth Brewer	1. Def's Pro Se Petition for Discretionary Review (COA18-1246) 2. Def's Pro Se Petition for Writ of Habeas Corpus	1. 2. Denied **09/10/2019**
358P19	State v. Jason Twardzik	1. Def's Pro Se Motion for Emergency Appeal of Denial of Defendant Request to Represent Self 2. Def's Pro Se Motion for Emergency Appeal of Denial of Defendant Request of Release on Own Recognizance 3. Def's Pro Se Motion for Emergency Appeal of Denial of Defendant Request of Dismissal of Charges 4. Def's Pro Se Motion for Emergency Appeal of Denial of Defendant Request for Removal of Counsel	1. Dismissed **09/10/2019** 2. Dismissed **09/10/2019** 3. Dismissed **09/10/2019** 4. Dismissed **09/10/2019**
378P18-5	State v. Napier Sandford Fuller	1. Def's Pro Se Motion to Prescribe Rules in the General Court of Justice re: Requests for Accommodations Per Title II of the ADA (COAP18-623) 2. Def's Pro Se Petition for Writ of Mandamus 3. Def's Pro Se Motion to Seal Medical Records 4. Def's Pro Se Motion for Temporary Stay 5. Def's Pro Se Petition for Writ of Supersedeas 6. Def's Pro Se Motion to Correct a Clerical Error in Court Order	1. Dismissed 2. Denied 3. Allowed 4. Denied **09/09/2019** 5. Denied **09/09/2019** 6. Denied

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

27 SEPTEMBER 2019

407P13-4	State v. Shawn Germaine Fraley	1. Def's Pro Se Motion to Extend Time to Answer and Respond to North Carolina Court of Appeals Order (COA13-69 P14-509 P17-44) 2. Def's Pro Se Motion for Appointment of Counsel	1. Dismissed **09/09/2019** 2. Denied **09/09/2019** **Davis, J., recused**
440P18-2	Waddell Bynum v. Progressive Universal Insurance	Plt's Pro Se Motion for Notice of Appeal	Dismissed
458P18	Lewis Scott Carlton and Thomas P. Wood v. Burke County Board of Education	1. Def's PDR Under N.C.G.S. § 7A-31 (COA18-62) 2. North Carolina School Boards Association's Motion for Leave to File Amicus Brief	1. Denied 2. Dismissed as moot **Ervin, J., recused** **Davis, J., recused**
548A04-2	State v. Vincent Lamont Harris	1. State's Motion for Temporary Stay (COA18-952) 2. State's Petition for Writ of Supersedeas 3. Def's Motion to Lift Temporary Stay and to Dismiss Petition for Writ of Supersedeas 4. State's PDR 5. State's Motion to Deem the Petition Timely Filed 6. Def's Motion to Dismiss State's PDR 7. Def's Motion in the Alternative to Deem State's PDR Filed on the Date this Court Decides on this Motion to Dismiss	1. Allowed **07/17/2019** Dissolved **09/25/2019** 2. Dismissed as moot 3. Denied 4. Special Order 5. Denied 6. Dismissed as moot 7. Dismissed as moot

ADMINISTRATIVE ORDER ESTABLISHING THE CHIEF JUSTICE'S RULES ADVISORY COMMISSION

In recognition of the need to monitor the North Carolina Rules of Civil Procedure and the General Rules of Practice for the Superior and District Courts and to recommend amendments to those rules that will promote the administration of justice, the Court hereby creates the Chief Justice's Rules Advisory Commission.

The Commission's chairperson will be the Chief Justice or the Chief Justice's designee. The Chief Justice will appoint the Commission's other members. The membership of the Commission shall be as follows:

- one judge or justice from the Appellate Division;
- one judge from the Superior Court Division;
- one judge from the District Court Division;
- one clerk of the superior court;
- one trial court administrator;
- three practicing attorneys; and
- four at-large members.

With the exception of the chairperson, the members of the Commission shall serve for a term of three years; provided, however, that in the discretion of the Chief Justice, the initial appointments may be for a term of less than three years so as to accomplish staggered terms for the membership of the Commission.

By virtue of this order, the Court issues to the Commission the following general charge:

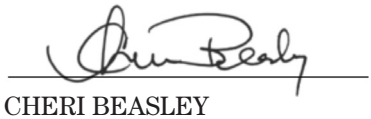
- to monitor, comprehensively and particularly, the North Carolina Rules of Civil Procedure and the General Rules of Practice for the Superior and District Courts on behalf of the judicial branch of government; and
- to recommend amendments, additions, and deletions to those rules as are considered necessary for the proper administration of justice.

By virtue of this order, the Court issues to the Commission the following special charge:

- to recommend amendments, additions, and deletions to the North Carolina Rules of Civil Procedure and the General Rules of Practice for the Superior and District Courts as are

considered necessary for the implementation of a statewide electronic-filing and case-management system.

Ordered by the Court in Conference, this the 25th day of September, 2019.



CHERI BEASLEY
Chief Justice
For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 25th day of September, 2019.

AMY L. FUNDERBURK
Clerk of the Supreme Court

ADMINISTRATIVE ORDER ESTABLISHING THE CHIEF JUSTICE'S FAMILY COURT ADVISORY COMMISSION

In recognition of the need to monitor North Carolina's family courts and to recommend improvements in those courts that will promote the administration of justice, the Supreme Court of North Carolina hereby creates the Chief Justice's Family Court Advisory Commission.

The Commission's chairperson will be the Chief Justice or the Chief Justice's designee. The Chief Justice will appoint the Commission's other members. The membership of the Commission shall be as follows:

- one justice of the Supreme Court of North Carolina;
- one judge of the North Carolina Court of Appeals;
- two chief district court judges, each from a district with a family court;
- two chief district court judges, each from a district without a family court;
- one clerk of the superior court from a district with a family court;
- one clerk of the superior court from a district without a family court;
- two family court administrators;
- one staff member from the North Carolina Department of Juvenile Justice and Delinquency Prevention;
- one chief juvenile court counselor;
- one guardian ad litem administrator;
- one representative from a domestic violence program;
- one representative from a local custody mediation program;
- one law professor;
- one practicing attorney who regularly represents a local department of social services;
- two practicing attorneys with expertise in juvenile law; and
- two practicing attorneys with expertise in domestic law.

With the exception of the chairperson, the members of the Commission shall serve for a term of three years provided, however, that in the discretion of the Chief Justice, the initial appointments may be for a term of less than three years so as to accomplish staggered terms for the membership of the Commission.

CHIEF JUSTICE'S FAMILY COURT ADVISORY COMMISSION

By virtue of this order, the Court issues the following charge to the Commission:

- to advise the Chief Justice and the Director of the Administrative Office of the Courts on family court issues, including automation efforts;
- to set guidelines and standards of practice for all family court districts;
- to assure accountability for the family court program;
- to make recommendations about future legislative action, including needed statutory changes, budgetary suggestions, or recommendations for expansion of the program statewide;
- to review and make recommendations about the interrelationship between family courts and other court programs, such as guardian ad litem, child custody mediation, family drug courts, and family financial settlement; and
- to oversee the further development of the family court training curriculum.

Ordered by the Court in Conference, this the 25th day of September, 2019.

s/Cheri Beasley

CHERI BEASLEY
Chief Justice
For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 25th day of September, 2019.

s/Amy L. Funderburk

AMY L. FUNDERBURK
Clerk of the Supreme

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